



**Finding of No Significant Impact  
on the Effects of Issuance of a Public Display Permit  
for Rehabilitated Pinnipeds  
(Permit File No. 10028; Mystic Aquarium)**

National Marine Fisheries Service

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?

Response: The animals under consideration for this permit including California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), grey seals (*Halichoerus grypus*), harp seals (*Phoca groenlandica*) and hooded seals (*Cystophora cristata*), 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.)?

Response: 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 effects 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 populations that are stable, and the population effects of retaining a few 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?

Response: 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 Mystic Aquarium and maintained in accordance with the Animal Welfare Act (AWA). The staff at Mystic Aquarium is highly trained in handling and sampling techniques for marine mammals. The principal investigator is capable of supervising the care and maintenance of these animals and assuring that staff are properly trained in husbandry protocols and safety procedures.

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?

Response: None of the species requested are listed under the Endangered Species Act. The animals under consideration for this permit would already be 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 activity in the wild, so no adverse effects to habitats or non-target species would occur. There would be effects only to the low number (20 total) of individual pinnipeds retained in captivity. These effects would be adverse, but would be considered minimal, as the animals would be subject to a high standard of care.

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

Response: The supporting EA evaluated the concern expressed by some stranding network members that the stranding response program might be perceived as a conduit for provision of animals for public display, and, in turn, that this could have an impact on the public support of that program. As analyzed in the EA, the number of releasable animals that would be retained in captivity is small (20 total) and no stranding members would be required to provide releasable animals to Mystic Aquarium. NMFS retains the authority and requirement to consider each acquisition individually, therefore, NMFS does not find that the issuance of this permit would result in a significant social or economic impact on the stranding response program. Beneficial impacts on the educational program at Mystic Aquarium are expected due to the improvement in the genetic diversity of the captive stock. These impacts are important to Mystic Aquarium's program but are not considered to have significant overarching social or economic impacts.

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

Response: During the public comment period, concerns were raised regarding the impacts of this action. As a result, the NMFS determined that preparation of an EA was warranted before the issuance of this permit. The following concerns were raised:

- Issuance of a permit for take from the wild should be the mechanism that would allow for retention of releasable marine mammals under NMFS' implementing regulations.
- Releasable animals should be considered the same as wild-captured animals, since the intent is to return the animals back to the wild population.
- Placement of releasable animals into captivity is in opposition to the mission of the stranding network which is the successful release of animals back to the wild. In addition, there are concerns regarding the public perception that the stranding networks are serving as a conduit for captive facilities, and that this perception would diminish the public support that rehabilitation facilities rely on to function.
- Mystic Aquarium should seek alternatives to retaining releasable animals, including obtaining non-releasable rehabilitated marine mammals and obtaining animals from other captive facilities.

Section 104 of the Marine Mammal Protection Act (MMPA) provides for exceptions to the moratorium on take through special exception permits for scientific research, enhancement, and public display. Section 109(h)(3) of the MMPA requires that steps be taken to return marine mammals taken under section 109(h)(1) to their natural habitat, where feasible. Under MMPA implementing regulations 50 CFR 216.27(b)(4), the Office Director may require use of a rehabilitated marine mammal for public display purposes in lieu of animals taken from the wild. NMFS' policy is to require a permit for retaining releasable stranded marine mammals, as an exception to authorize take, since the animals would have otherwise been released to the wild. Therefore, in the supporting EA, NMFS has analyzed the effects of the proposed action as if animals would be removed from the wild, with the exception of describing and analyzing the effects of capture activities, since these animals would have already been removed into captivity under separate authority for rehabilitation.

Mystic Aquarium indicated in their application that they would first consider non-releasable rehabilitated marine mammals that meet their program's objectives, and has shown a history of doing so. Mystic Aquarium acknowledged in the permit application that the option to retain releasable rehabilitated marine mammals would be in lieu of directly taking animals in the wild.

Mystic Aquarium was provided a copy of the comments received on their application. Mystic Aquarium reiterated that they would be willing to consider non-releasable animals prior to requesting a releasable animal. Mystic Aquarium

indicated that issuance of this permit would result in a positive impact on captive populations, as obtaining these animals would increase the genetic diversity and the fitness of captive pinniped populations. Mystic Aquarium is sensitive to the differing opinions that some rehabilitation facilities may have regarding this application. Mystic will only obtain releasable marine mammals from rehabilitation facilities that agree with the purpose of the proposed permit and are not opposed to retaining releasable rehabilitated marine mammals.

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?

Response: The action area is limited to rehabilitation facilities from where the animals will be selected and the Mystic Aquarium where the animals will be maintained permanently. No area in the wild and no animals 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?

Response: 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?

Response: 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 provided veterinary care and 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?

Response: The proposed action would have no affect on 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. No activities would occur in the wild.

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

Response: The proposed action is not likely to result in the introduction or spread of a nonindigenous species. Animals under consideration would already be removed from the wild population and would be permanently maintained in captivity. Mystic Aquarium has put together a proposal to adequately evaluate potential animals for suitability for their program. Any animal found to be unsuitable for Mystic'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 represent a decision in principle about a future consideration?

Response: Issuance of the permit would not establish a precedent for future actions or represent a decision in principle about future proposals. Inquiries regarding the status of this permit application have been received and it is possible that other members of the public display community may request 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?

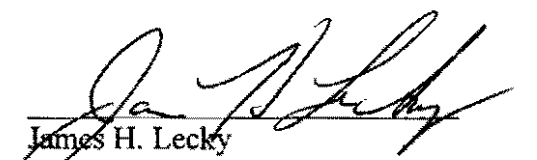
Response: The action would not result in any violation of Federal state or local laws for environmental protection. As previously stated, the MMPA recognizes public display as an exception to the take moratorium under the Act and Mystic Aquarium meets the criteria under the MMPA to hold marine mammals for public display purposes. Furthermore, the regulations (216.27(b)(4)) specifically allow for the issuance of special exemption permits regarding the disposition of rehabilitated marine mammals. Mystic Aquarium holds a license under the AWA to hold marine mammals for public display purposes and APHIS has reviewed and approved the application with respect to AWA compliance.

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?

Response: The action is not expected to result in any cumulative adverse effects on the five pinniped species. The individual animals under consideration would already be removed from the wild population due to circumstances warranting human intervention, such as illness or injury that would likely lead to death of the individual in the wild. While these animals would be successfully rehabilitated to the point that they are considered healthy and releasable to the wild, the subject populations are not threatened or endangered, and are considered healthy. Therefore, not releasing a small finite number of pinnipeds to the wild (that would have otherwise perished without intervention), 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 analysis contained in the Environmental Assessment (EA) prepared for Issuance of Permit No.10028, pursuant to the MMPA, it is hereby determined that the issuance of Permit No.10028 will not significantly impact the quality of the human environment as described above and in the EA. 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 Environment Impact Statement for this action is not necessary.

  
James H. Lecky  
Director, Office of Protected Resources

NOV 18 2008

\_\_\_\_\_  
Date



NOV 18 2008

**Environmental Assessment  
on the Effects of Issuance of a Public Display Permit  
for Rehabilitated Pinnipeds  
(Permit File No. 10028; Mystic Aquarium)**

**I. Proposed Action:** The Permits, Conservation, and Education Division of National Marine Fisheries Service (NMFS) proposes to issue a public display permit to Mystic Aquarium and Institute for Exploration, 55 Coogan Blvd., Mystic, CT 06355 [File No. 10028; Responsible Party: Mr. Gerard Burrow]. This permit would authorize the acquisition of releasable rehabilitated pinnipeds (a maximum of eight otariids and 20 phocids) over a 5-year period. Up to six females and two males of each of the following species are requested to be obtained from cooperating rehabilitation centers for the purposes of public display at Mystic Aquarium: California sea lion (*Zalophus californianus*), harbor seal (*Phoca vitulina*), gray seal (*Halichoerus grypus*), harp seal (*Phoca groenlandica*) and hooded seal (*Cystophora cristata*). This authorization would be granted pursuant to the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking, importing, and exporting of marine mammals (50 CFR 216).

The primary purpose of the permit is to provide an exemption from the take prohibitions under the MMPA to allow “takes” of marine mammals for the purpose of public display. The need for issuance of the permit is related to NMFS’s mandate under the MMPA. Specifically, NMFS has a responsibility to implement the MMPA for those marine mammal species under its jurisdiction. The MMPA prohibits take of marine mammals with only a few very specific exceptions, including for public display purposes. Permit issuance criteria require that public display activities are consistent with the purposes and policies of the MMPA and will not have a significant adverse impact on the species or stock. NMFS reviewed the proposed action to ensure all the proposed activities fulfill these permit issuance criteria.

**II. Program Description:** Section 104 of the MMPA allows for issuance of permits to take marine mammals for the purposes of public display. These permits must specify the number and species of animals that can be taken, and designate the manner, period, and locations in which the takes may occur. MMPA regulations promulgated at 50 CFR Part 216 specify criteria to be considered by the Director, Office of Protected Resources (Office Director) in reviewing applications and making a decision regarding issuance of a permit or an amendment to a permit. Specifically, 50 CFR 216.33(c) requires that the Office Director make an initial determination under the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) as to whether the proposed activity is categorically excluded from further environmental impact review, or whether the preparation of an environmental assessment (EA) or environmental



impact statement (EIS) is necessary; and prepare any required EA or EIS if an initial determination is made that the activity proposed is not categorically excluded from such further review. This initial determination must be made prior to publishing notice of receipt of the permit application in the *Federal Register*. Public display permits are in general, categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) (NOAA Administrative Order Series 216-6, May 20, 1999).

The NMFS' Office of Protected Resources has received an application for a public display permit for the acquisition of releasable otariids and phocids post-rehabilitation, over a five year period. The application was published in the *Federal Register* on August 17, 2007 (72 FR 46212). During the public comment period, concerns were raised regarding the biological and economic impacts of this action. As a result, NMFS has determined that preparation of an EA is warranted to analyze the environmental effects that would result from the issuance of this permit.

**III. Description of the Proposed Action:** The NMFS' Permits, Conservation and Education Division proposes to issue a public display permit, pursuant to section 104 of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*). The permit would authorize acquisition of releasable pinnipeds over a 5-year period, for a maximum of eight otariids and 20 phocids post-rehabilitation from NMFS' Marine Mammal Stranding Network for the purpose of public display. Animals will be selected according to a protocol developed by Mystic taking into account the physical and behavioral attributes of potential candidates in consultation with the rehabilitation centers identified as partners. The acquisition authority of the permit would expire five years after issuance (in 2013). However, the acquired animals would remain in permanent captivity as public display animals for the duration of their lives.

The proposed activity is summarized here for purposes of this analysis, and is fully described in the attached application dated August 6, 2007. The subject animals would be taken from the wild under the authority of the Marine Mammal Health and Stranding Response Program (sections 109(h)(1), 112(c), and Title IV (16 U.S.C. 1421 *et seq.*) of the MMPA). Mystic Aquarium personnel and the attending veterinarian of the partnering rehabilitation centers would select animals for consideration in consultation with NMFS' Regional Offices. Each acquisition would be subject to the approval of the Office Director.

NMFS is satisfied that the applicant meets the public display criteria as specified in the MMPA. The applicant has documented the conservation/education program of the facility and admission policies in the application. The USDA's Animal and Plant Health Inspection Service (APHIS) has confirmed that Mystic Aquarium is licensed under the Animal Welfare Act (AWA) and has adequate facilities to maintain the requested number of animals. In addition to public display, these animals would be available for non-intrusive research activities as authorized by the attending veterinarian of Mystic. Use of public display animals for intrusive research would require the applicant to apply for and be issued a scientific research permit.



**IV. Alternatives Under Consideration, Including the Proposed Action:** There are two alternatives considered regarding this permit application: (A) complete denial of the permit and (B) issuance of a public display permit with conditions.

**A. Complete Denial of the Permit (no action):** Under this alternative, NMFS would not authorize the retention of releasable marine mammals as requested in the permit application; however, non-releasable animals could be obtained through a letter of authorization. This is the no action alternative.

**B. Issuance of Complete Permit with Conditions (proposed action):** This alternative would authorize acquisition of animals as proposed in the application, with appropriate conditions as recommended by reviewers and standard conditions for captive public display permits administered by the Permits, Conservation and Education Division. Because these animals would be considered releasable and, in the absence of this permit, would be returned to the wild; this action is similar to a permit issued for a take from the wild. In this case, Mystic Aquarium is requesting a permit to retain releasable rehabilitated pinnipeds in lieu of taking from the wild in order to minimize the direct and indirect effects of their action on the wild population.

**V. Description of Affected Environment:** The California sea lion, harbor seal, gray seal, harp seal, and hooded seal are all species protected under the MMPA and may be adversely affected by issuance of this permit. The action area of this permit application covers the Mystic Aquarium facility in Mystic, Connecticut and any partnering rehabilitation centers. No area or animals in the wild would be affected (as described in Section III above, the subject animals would already have been taken from the wild via separate action under the authority of the Marine Mammal Health and Stranding Response Program).

#### **A. Status of the Species**

**California Sea Lion (*Zalophus californianus*)**  
from Stock Assessment Report - Carretta et al. 2007.

The U.S. stock of California sea lions is generally increasing and currently estimated to be 238,000 animals producing approximately 55,519 pups annually at a maximum population growth rate of 6.52 (corrected for El Nino years). The minimum stock size is conservatively estimated at 141,842 sea lions, resulting in a PBR of 8,511 animals. Review of the populations trends indicate that in 1997 California sea lions reached their Maximum Net Productivity Level of 39,800 pups per year. The generalized logistical growth model has further suggested that the carrying capacity for this species may have been reached at 46,800 pups per year. The declaration of the carrying capacity needs to be verified over the course of time; however, agreement remains that the current California sea lion population is stable and growing. This species is not listed under the ESA or as “depleted” under the MMPA. Although, there is some uncertainty regarding the extent of mortality associated with the California set gillnet fishery,

California sea lions are not considered a “strategic” stock under the MMPA given that the total human-caused mortality is still likely to remain below PBR.

**Pacific Harbor Seal (*Phoca vitulina richardsi*)**

from Stock Assessment Reports – Angliss and Outlaw. 2008; Carretta et al. 2003; Carretta et al. 2007; Carretta et al. 2005.

The current division of Alaskan harbor seals (Southeast Alaska, Gulf of Alaska, and Bering Sea stocks) is being reassessed based on new genetic information. The current statewide abundance estimate for Alaskan harbor seals is 180,017 and is based on 1996-2000 surveys, however these surveys were considered incomplete due to the area coverage (terrestrial sites in Prince William Sound and glacial sites in the Gulf of Alaska and the Southeast Alaska regions). Harbor seals are also found along the entire west coast and have been divided into three stocks (Washington Inland Waters, Oregon/Washington Coast and the California stocks). Human-caused mortality for the Pacific coast harbor seals is primarily caused by directed native (subsistence) harvesting, fisheries interactions, vessel interactions, entrapment in power plants, and infrequent illegal intentional killings.

This species is not considered “depleted” under the MMPA or listed under the ESA as “threatened” or “endangered.” Based on the best scientific information available, the estimated level of human-caused mortality and serious injury for Pacific harbor seals is not known to exceed allowable PBR and these stocks are not classified as a strategic.

	Minimum Population Estimate	Potential Biological Removal (PBR)	Subsistence Harvest: average per year
Southeast Alaska Stock <sup>1</sup>	108,670	3,260	1,092
Gulf of Alaska Stock <sup>1</sup>	44,453	1,334	795
Bering Sea Stock <sup>1</sup>	20,109	603	174.3
Washington Inland Waters Stock <sup>2</sup>	12,844	771	0-5
Oregon/Washington Coast Stock <sup>3</sup>	22,380	1,343	*very few
California Stock <sup>4</sup>	31,600	1,896	NA

<sup>1</sup> Angliss and Outlaw. 2008.

<sup>2</sup> Carretta et al. 2003.

<sup>3</sup> Carretta et al. 2007.

<sup>4</sup> Carretta et al. 2005.

**Atlantic Harbor Seal (*Phoca vitulina*)**

from Stock Assessment Report - Waring et al. 2007

Since 1972, the observed counts of Western North Atlantic stock of harbor seals have been increasing over time and the current population is estimated to be 99,340 individuals. The minimum stock size is estimated to be 91,546 animals, generating a PBR of 2,746 animals. Total human-caused mortality and serious injury for this species is estimated to be 892 animals per year, the result of fisheries interactions and stranding mortalities. These numbers are well below PBR for this species. The stock is not listed under the ESA or considered “depleted” or “strategic” under the MMPA.

**Gray Seal (*Halichoerus grypus*)**

from Stock Assessment Report - Waring et al. 2007

The range of the Western North Atlantic gray seal stock stretches from New England to Labrador. The gray seal stock status relative to its optimum sustainable population (OSP) in U.S. waters is unknown, but the population’s numbers appear to be increasing in both U.S. and Canadian waters. The current population in Canada is estimated to be between 125,541 and 169,064 animals, however, a minimum population estimate for U.S. waters can not be calculated based on present data. Seal counts would suggest that the population of gray seals is increasing in the U.S., but cannot be confirmed. For example, seal counts at Muskeget and Monomoy changed from 2,010 (1994) to 5,611 (1999), but the increase in seals could be the result of recruitment, immigration, or a combination of both. U.S. fishery-related mortality and serious injury for this stock is low relative to the stock size in Canadian and U.S. waters and can be considered insignificant. Gray seals are not listed under the ESA as threatened or endangered nor are they considered “depleted” or “strategic” under the MMPA.

**Harp Seal (*Phoca groenlandica*)**

from Stock Assessment Report - Waring et al. 2007

Harp seals are a highly migratory species with a range that encompasses much of the North Atlantic and Arctic Oceans including the western North Atlantic coasts of Canada and the U.S. The southern limit of the harp seal's habitat extends into the U.S. waters during the winter and spring. The 2004 population estimate for western North Atlantic harp seals was 5.9 million. The minimum population estimate based on the 2004 pup survey results was 5.3 million seals. Insufficient data makes it impossible to calculate a minimum population estimate for U.S. waters. However, the number of sightings and strandings of harp seals found in U.S. waters has been increasing over time generally from January to May. This occurs concurrently with the migration when harp seals are at the southern most point of their range. Estimated annual human-caused mortality was estimated to be 447,442 for the period of 2001-2005. This figure is based on mortality and serious injury from the Canadian hunt, by-catch in U.S. fisheries and non-fishery related, human interaction stranding data.

It is believed that harp seals are within OSP; however, lacking a minimum population size in the U.S., the PBR for harp seals in U.S. waters cannot be calculated. Applying the calculations to the minimum population estimate for Canadian waters resulted in a PBR of 321,000 animals, however, there is concern that the catch statistics for the Canadian hunt are under reported and, thus, a PBR of 160,000 animals may be more accurate. The current Canadian model predicts replacement yields between 522,000 and 541,000 animals. The species is not listed as threatened or endangered under the Endangered Species Act and is not considered “depleted” or “strategic” under the MMPA.

### **Hooded Seal (*Cystophora cristata*)**

from Stock Assessment Report - Waring et al. 2007

Hooded seals occur in the North Atlantic and Arctic Oceans. This species is most likely found in deeper waters and farther offshore than harp seals. This migratory species occurs in the U.S. from Maine to Florida and occasionally as far south as Puerto Rico. These appearances usually occur between January and May in New England waters, and in summer and autumn off the southeast U.S. coast and in the Caribbean. The abundance of hooded seals in the western North Atlantic, derived from pup production estimates, indicates that the total population in 2005 was 592,100 individuals. The 2005 pup survey puts the minimum population estimate at 512,000 animals. However the minimum population estimate for strictly U.S. waters can not be derived from this data.

During 2001-2005, the total human-caused mortality and serious injury to hooded seals was estimated to be 5,199 animals. This estimate combines morality and serious injury estimates from the Canadian and Greenland harvests, by-catch in U.S. fisheries, and non-fisheries related, human interaction stranding data. The PBR for the entire western North Atlantic hooded seal stock is 15,360 but it is unknown for just U.S. waters. The status of hooded seals relative to OSP in U.S. waters is unknown, but the abundance of this species appears to be increasing. Hooded seals are not listed under the Endangered Species Act (ESA) as threatened or endangered nor is the population considered “depleted” or “strategic” under the MMPA.

**VI. Environmental Consequences:** The action proposed in this application under consideration consists of the permanent retention for public display purposes of up to six females and two males of each of the following species: California sea lions, harbor seals, gray seals, harp seals and hooded seals over a 5-year period, for a maximum of eight otariids and 20 phocids to be obtained from cooperating Marine Mammal Stranding Network participants. The consequences of the proposed action, as well as the alternatives, on the individual animals and populations as a whole must be considered. There are no geographic areas, plant or animal species other than the marine mammals species specifically referenced that would be affected by the proposed activities. Following is a review of the consequences of the alternatives presented in Section IV (Alternatives Including the Proposed Action) above.

**A. Consequence of Non-issuance of Permit (no action):** If this permit is not issued, the subject animals would be released to the wild according to the Marine Mammal Stranding Network's release guidelines. There are three potential outcomes of release; (1) the animal survives and contributes to increasing the species' population, (2) the animal does not survive and is removed from the population, or (3) the animal restrands and release is reconsidered for the animal.

Under the no action alternative, Mystic Aquarium would not be precluded from requesting and obtaining non-releasable pinnipeds through the stranding network as authorized in applicable regulations (50 CFR 216.27(b) and (c)). The regulations allow for non-releasable marine mammals (not listed under the Endangered Species Act) to be placed into permanent captivity with a letter of authorization. These animals would be determined to be unfit for release by the appropriate NMFS Regional Office and the decision would be made to place these animals into permanent captivity. Mystic has indicated that they are interested in exploring this option; however, there is no guarantee that appropriate animals would be available in accordance with the acquisition timetable established by the aquarium. In addition, Mystic is looking for specific animals that would add to the genetic diversity of the captive pinniped populations and as such require animals that are fit for breeding and free of conditions that may be passed on genetically to any offspring.

From the perspective of Mystic Aquarium, denial of this permit would prevent the aquarium from this opportunity to access an important source of animals for enhancing their current captive population both in the number of animals and increasing the genetic diversity. Although other options are available (collection from the wild and acquisition of non-releasables), use of releasable rehabilitated pinnipeds provides for the greatest benefit with the least impact to the population while still meeting the objectives and needs of the educational and breeding program of the institution. Denial would inhibit the continued development of the educational program conducted by the aquarium.

**B. Consequence of Issuance of a Public Display Permit, with Conditions:**

Public display of marine mammals is identified as an exception under Section 104 of the MMPA and is a purpose for which permits may be issued. The regulations at 50 CFR 216.27 allow for the disposition of rehabilitated marine mammals under special exception permits. Specifically, section 216.27(b)(4) gives the Office Director the option of authorizing the acquisition of any rehabilitated marine mammal regardless of its ability to be released, in place of authorizing a take (collection) from the wild for scientific research, enhancement, or public display purposes. Furthermore, NMFS is satisfied that the applicant meets the public display criteria as specified in the MMPA.

The species requested (California sea lions, harbor seals, gray seals, harp seals and hooded seals) are not species listed as endangered or threatened under the ESA. Nor are they considered "strategic" stocks or listed as "depleted" under the MMPA. Data from stock assessments

suggest that these populations are healthy. The animals under consideration would be obtained through partnerships with NMFS' Marine Mammal Stranding Network. These animals would be removed from the wild under the authority of Sections 109(h) and/or 112(c) of the MMPA and, thus, would be identified as those animals in need of human assistance in the form of rehabilitation. There would be no indirect takes or harassment associated with issuance of this permit and only those animals selected for permanent captivity would be directly impacted. In absence of this permit, these animals would be released back to the wild. Although survivorship of rehabbed and released animals is unknown, these animals might potentially contribute as reproductive members of the population and as such this action should be considered similar to a take from the wild. In this case, the method of collection is not relevant as the original take has already occurred under the authority given to the stranding network; however, the effects of removing those animals from the population (i.e. not released) must be examined. It can be concluded that there would be no significant direct or indirect effects on the populations of these species due to the retention of these animals because (1) the number of animals requested is low compared to the overall population numbers, and (2) the animals would be taken from stranded, rehabilitated stock which might not survive upon release and would not result in any incidental harassment of wild animals.

There would be minimal adverse effects on the subject animals from the proposed activities, i.e. permanent retention in captivity. These animals would receive daily care, be treated humanely, and provided veterinary care. The effects of any husbandry and medical sampling would also be minimal, as trained personnel or the attending veterinarian would perform these procedures and the animals would be trained to voluntarily allow sampling. Because these animals would be in permanent captivity, they would be monitored daily by husbandry staff and the attending veterinarian would be notified immediately of any medical or husbandry concerns. This permit would only authorize the acquisition of the releasable rehabilitated pinnipeds into a public display facility, specifically Mystic Aquarium. The care and maintenance of these animals once acquired would be under the sole jurisdiction of APHIS, pursuant to the AWA.

### **C. Consideration of Comments on the Application:**

#### **Summary of Comments Received**

The Marine Mammal Commission recommended issuance of the permit with the following comments: (1) non-releasable animals and animals considered to have a poorer chance of survival are considered first; (2) NMFS, in consultation with APHIS, is satisfied that the transport and maintenance plans are adequate to provide for the well-being of the animals; and (3) NMFS is satisfied that the applicant's education program is acceptable.

Mystic has indicated that they are willing to consider appropriate non-releasable animals first and have a history of accepting these animals into their collection. NMFS has consulted with APHIS regarding transport and maintenance plans and is satisfied that they are adequate. In addition, NMFS is satisfied with Mystic's education program.

The Animal and Plant Inspection Service confirmed that Mystic Aquarium is an AWA licensed facility and is substantially in compliance with AWA requirements. However, APHIS does not support the permit as proposed and believes that proper procedure dictates that issuance of a permit for take from the wild is the legal mechanism that would allow for retention of releasable marine mammals under NMFS' implementing regulations. As a result, this application should be considered in violation of the MMPA, and in APHIS' opinion is in violation of the intended purpose of the stranding network. Mystic Aquarium should be requesting non-releasable marine mammals and working with public display facilities in cooperation to maintain a sustainable captive population among the animals currently in captivity.

Nine letters were received during the public comment period in regard to this application. Five letters were in support of the application and four were opposed. Those individuals in support of Mystic's application recognized Mystic's long history as a leader in the response, treatment and research of stranded marine mammals and point out Mystic's commitment to the education and outreach to the public. In addition, they acknowledge Mystic's history of accepting non-releasable marine mammals into their collection and the need for the animals requested via this permit application to contribute to the genetic diversity and sustainability of captive pinniped populations. The species under consideration for retention are common species from both US coasts and in Alaska and at a population level would result in, at worst, a neutral impact. NMFS regulations (216.27(b)(4)) gives the Office Director the option of authorizing the acquisition of any rehabilitated marine mammals regardless of its ability to be released, in place of authorizing a take (collection) from the wild.

Those in opposition of this permit application contend that placement of releasable animals into captivity is in opposition to the mission of the stranding network, which is the successful release of animals back to the wild. In addition, the commenters raised concerns regarding the public perception that the stranding networks are serving as a conduit for captive facilities and that this perception would diminish the public support that rehabilitation facilities rely on to function. Commenters contended that these releasable animals should be considered the same as wild-captured animals, since the intent is to return the animals back to the wild population. Public commenters encouraged Mystic to seek alternatives to retaining releasable animals such as placement of non-releasable animals and transfer from other captive facilities.

### **Consideration of Comments**

The comments received on the application were considered in evaluating this proposed action and potential effects on the human environment. As part of the permit procedure, NMFS provided Mystic Aquarium with an opportunity to review the comments, and to provide that response to NMFS for consideration in the permitting decision and this associated NEPA analysis. A summary of Mystic's response is provided in this subsection, as is a summary of how NMFS considered both the comments and the applicant's response in this evaluation of environmental consequences.

Mystic Aquarium was provided a copy of the comments received on their application. Mystic reiterated that they would be willing to consider appropriate non-releasable animals as well as those evaluated to have a lower chance of survival if released. In addition, Mystic again pointed out their position as a rehabilitation, research and education facility which is authorized under the AWA to hold marine mammals for public display purposes. Mystic contends that because animals taken into the rehabilitation system are already removed from the wild and their chance of survival is unknown once released; there would be no impact to the wild population. In contrast, issuance of this permit will result in a positive impact on captive populations. These animals will increase the genetic diversity and, thus the fitness, of captive pinniped populations through breeding loans and transfer of the progeny to other appropriate facilities. Mystic Aquarium is sensitive to the differing opinions that some rehab facilities may have regarding this application. Mystic is only interested in working with like-minded organizations and is not interested in having any rehab facility being “forced” into providing animals under this permit.

NMFS is satisfied with the applicant’s response to comments. Section 104 of the Marine Mammal Protection Act (MMPA) provides for exceptions to the moratorium to take through special exception permits for scientific research, enhancement, and public display. Section 109(h)(3) of the MMPA requires that steps be taken to return marine mammals taken under section 109(h)(1) to their natural habitat, where feasible. Under MMPA implementing regulations at 50 CFR 216.27(b)(4), the Office Director may require use of a rehabilitated marine mammal for public display purposes in lieu of animals taken from the wild. NMFS’ policy is to require a permit for retaining releasable stranded marine mammals, as an exception to the prohibition of take, since the animals would have otherwise been released to the wild. Therefore, the analysis provided in section VI.B coincides the effects of the proposed action as if animals would be removed from the wild, with the exception of describing and analyzing the effects of capture activities in the wild, since these animals would have already been removed into captivity under separate authority for purposes of rehabilitation.

This interpretation of NMFS’ implementing regulations is consistent with a previous permit issued to take releasable marine mammals (Permit No. 1042-1736; Jenifer Hurley, Responsible Party). As previously discussed, the applicant is not opposed to accepting non-releasable animals that meet the program’s objectives and has shown a history of doing so.

**VII. Mitigative Measures:** This permit would not authorize any direct takes in the wild, as the animals under consideration would all come from the population of animals previously identified as needing the assistance by the Marine Mammal Health and Stranding Response Program and would be taken under their legal authority as rescue. After undergoing rehabilitation, all animals rescued by the Stranding Network would be evaluated for release according to the draft release guidelines. The conditions that would be included in the permit are summarized below:

- The Office Director must authorize retention of an animal for the purpose of this permit



in consultation with the attending veterinarian and the NMFS Regional Administrator.

- The Office Director must be consulted regarding the disposition of any animal obtained under this permit that is deemed unsuitable for public display purposes.
- The Permit Holder must submit acquisition reports (Marine Mammal Data Sheet) and disposition reports (NOAA Form 89-878 and Marine Mammal Transfer/Transport Notification form).
- Animals may not be released into the wild except under a separate scientific research permit or in accordance with the stranding regulations, as determined by the Office Director.

**VIII. Cumulative Impacts:** An environmental assessment must consider cumulative effects when determining whether an action significantly affects environmental quality. The cumulative impact is 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 (Federal or non-Federal) or person undertakes such other actions. Significance cannot be avoided if it is reasonable to anticipate a cumulatively significant impact on the environment.

One previous permit was issued which authorizes the retention of rehabilitated marine mammals for public display purposes (Permit No. 1042-1736; Dr. Jenifer Hurley, Responsible Party) and inquires have been received by other marine mammal public display facilities that are interested in exploring the option of receiving a similar permit. However, each permit application received is evaluated on its own merits relative to the criteria established in the MMPA and NMFS' implementing regulations. There are currently no permits for the collection of animals from the wild for public display. The animals under consideration for this permit are animals that would be considered releasable and would have the potential to contribute to future population growth. However, the number of animals requested to be transferred into permanent captivity would result in negligible impact when compared to the current status of the populations. The proposed permit would not authorize any directed takes from the wild; therefore, there would be no indirect takes associated the proposed activities. Thus, the cumulative impacts that would result from issuance of this permit would be considered insignificant to the species and the environment.

## **IX. Compliance with other Acts**

**1. Compliance with the Endangered Species Act:** The species requested (California sea lions, harbor seals, gray seals, harp seals and hooded seals) are not listed as endangered or threatened under the Endangered Species Act. Therefore, there was no need for consultation.

**2. Compliance with the Magnuson-Stevens Act:** The action in the application for Permit No. 1028 would not impact any Essential Fish Habitat or Habitat Areas of Particular Concern, so no consultation was conducted.

**3. Coordination with the National Ocean Service:** The action in the application for Permit No. 10028 would not impact a National Marine Sanctuary, so no consultation was conducted.

**4. Compliance with CITES:** No import or export would be authorized thus there is no requirement for compliance with CITES.

## **XII. Literature Cited:**

Angliss, R. P., and R. B. Outlaw. 2008. Alaska marine mammal stock assessments, 2007. U.S. Dep. Commer., NOAA Tech. Memo. NMFSAFSC- 180, 252 p.

Carretta, J.V., K.A. Forney, M.M. Muto, J. Barlow, J. Baker, B. Hanson, and M.S. Lowry. 2003. U.S. Pacific Marine Mammal Stock Assessments: 2003. US Department of Commerce, NOAA Technical Memorandum, NMFS-SWFSC-414. 294 p.

Carretta, J.V., K.A. Forney, M.S. Lowry, J. Barlow, J. Baker, B. Hanson, and M.M. Muto. 2007. U.S. Pacific Marine Mammal Stock Assessments: 2007. US Department of Commerce, NOAA Technical Memorandum, NMFS-SWFSC-414. 320 p.

Carretta, J.V., K.A. Forney, M.M. Muto, J. Barlow, J. Baker, B. Hanson, and M.S. Lowry. 2005. U.S. Pacific Marine Mammal Stock Assessments: 2005. US Department of Commerce, NOAA Technical Memorandum, NMFS-SWFSC-414. 324 p.

Waring GT, Josephson E, Fairfield-Walsh CP, Maze-Foley K, editors. 2007. U.S. Atlantic and Gulf of Mexico Marine Mammal Stock Assessments -- 2007. NOAA Tech Memo NMFS NE 205; 415 p.