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May 24, 2011

Refer To File #: 333252-0001

Michael Payne
Permits and Documentation Division Chief
Office of Protected Resources
National Oceanic and Atmospheric Administration
United States Department of Commerce
Silver Spring Metro Center 3
1315 East-West Highway, Room 13822
Silver Spring, MD 20910

Dear Mr. ^{Payne} Payne:

On behalf of the Institute for Marine Mammal Studies ("IMMS"), I am pleased to provide this response to the comments NMFS received on the Environmental Assessment ("EA") for IMMS' sea lion permit application number 15537.

1. There were no arguments presented by any commenter on the merits of the biological and scientific information in the EA regarding the sea lion population stock assessment or the effect of the take of eight sea lions on that population. Similarly, no commenter challenged the statutory authority of NMFS to issue a take permit for public display. It is also significant that no commenter argued stranding is a normal behavior or that IMMS' proposed method of take from the pool of stranded animals is not preferred to captures from the wild.

2. Several commenters asserted that granting the permit to IMMS somehow violates the Marine Mammal Protection Act ("MMPA") because, according to these commenters, the MMPA "requires" that releasable stranded animals be returned to the wild if that can be done. The statutory language is not so clear as commenters pretend given what IMMS' permit actually seeks to do. Moreover, in the context of IMMS's permit application, the statutory interpretation presented by these commenters has already been rejected by NMFS in its implementing regulations. At the outset, please recall that the permit application filed by IMMS is to take animals from the wild. As noted above, there is no dispute that the MMPA allows this. However, recognizing that animals strand, IMMS proposed that instead of going onto open waters and capturing sea lions at sea or in rivers that IMMS would take eight animals from the population of sea lions that strand themselves on the beach. NMFS' regulations regarding the disposition of stranded animals state that "Notwithstanding any other provision of this section [NMFS] may require the use of a rehabilitated marine mammal for any activity authorized [under the Act] in lieu of animals being taken from the wild." 50 C.F.R. §216.27(b)(4). This is precisely what IMMS' permit proposes to do. Indeed, NMFS' permit application form and instructions for

an MMPA take or import permit states on page 3 that "Public display permits are required for...the retention of releasable stranded marine mammals for purposes of public display." Again at page 4, NMFS states "A public display permit is required to hold a releasable beached/stranded marine mammal in captivity for any purpose, including public display." In short, NMFS' regulations and policies clearly contemplate that stranded, releasable marine mammals may be taken for public display purposes.

3. Remuneration for rehabilitating stranded animals has not been permitted by NMFS. As a stranding facility IMMS understands this policy and has never received any remuneration for rehabilitating stranded animals. Nevertheless, IMMS is willing to reimburse any stranding facility for reasonable costs that are mutually determined and agreed upon prior to, or after, that facility undertakes the rehabilitation of an animal that may be taken pursuant to IMMS' permit.

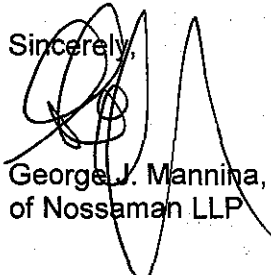
4. Granting this application will not establish an irrevocable precedent as each permit application to take animals under the MMPA is, and must be, evaluated independently. IMMS only wishes to point out that in two prior cases, NMFS has rejected the legal and other arguments being made by some commenters and has issued permits virtually identical to that sought by IMMS.

5. Some commenters challenged the merits of public display. Their opposition to the IMMS permit is rooted in that philosophy, not in the merits of the application. However, the MMPA and its legislative history strongly support and endorse public display. Please see IMMS' comments dated August 10, 2010 regarding the permit application for a more detailed review of the MMPA and its legislative history on this issue. These comments are attached and are hereby incorporated into this response by reference.

6. Some commentators referenced past employees of a company that employed Dr. Solangi many years ago. That company ceased doing business in 2005 as a result of Hurricane Katrina. All these disgruntled ex-employees worked with that company in the 1980s and 1990s. IMMS has fully responded to these comments in its August 10, 2010 response to comments attached hereto. Further, it is important to recognize that IMMS has an exhibitor's license, displays marine mammals, and is in full compliance with the requirements of the Animal Welfare Act.

7. In summary, the IMMS application for taking eight sea lions is in full compliance of the MMPA, will not adversely affect the sea lion stock in the wild, and the method of take (releasable stranded animals) is neither unique nor inhumane.

Sincerely,



George J. Mannina, Jr.
of Nossaman LLP

GJM/jm
Enclosures



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August 10, 2010

Via Email

Ms. Jennifer Skidmore
Office of Protected Resources
National Marine Fisheries Service
Silver Spring Metro Center 3
1315 East-West Highway
Silver Spring, MD 20910

Dear Jennifer:

Attached please find the response of the Institute for Marine Mammal Studies (“IMMS”) to the comments received on its permit application (15537) to take California sea lions.

It appears that most reviewers were confused about the type of permit for which IMMS applied. The IMMS application is for a “take” from the wild pursuant section 104 of the Marine Mammal Protection Act (“MMPA”), 16 U.S.C. 1374, with the method of take being the removal of releasable stranded animals. Regulations set forth at 50 C.F.R. 216.27 are not applicable to IMMS’ permit request. As you know, Mystic Aquarium in Connecticut was issued a permit in 2007 to take releasable stranded sea lions.

IMMS’ request complies with the MMPA. No scientific evidence was provided in any of the comments to refute the fact that the take of eight sea lions will not negatively affect the wild population. IMMS has a public display facility with a USDA exhibitor license and is in compliance with all relevant regulations.

IMMS would greatly appreciate the prompt issuance of the permit. IMMS will provide the necessary personnel, equipment, and care for the releasable animals while they are at the stranding facilities. IMMS will be responsible for the transport of the animals to its facilities in

Ms. Jennifer Skidmore
Office of Protected Resources
National Marine Fisheries Service
August 10, 2010
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Gulfport. IMMS would also look forward to working with NMFS to identify appropriate stranded animals.

Sincerely,

A handwritten signature in black ink, appearing to read 'GJM', with a stylized flourish at the end.

George J. Mannina, Jr.
of Nossaman LLP

GJM/jm
Attachment

NMFS SEA LION PERMIT FILE NUMBER 15537

IMMS RESPONSE TO PUBLIC COMMENTS PROVIDED BY NMFS

NMFS Internal Comments

- *IMMS should explore partnerships and cooperative agreements with other public display facilities.*

IMMS has already tried this option as a method for obtaining sea lions. There is a shortage of available California sea lions from other public display facilities evidenced by the fact that there are over 20 facilities seeking to receive non-releasable stranded sea lions.

- *The applicant's needs could be met by accepting non-releasable animals.*

IMMS has already indicated it is willing to accept non-releasable sea lions. On January 22, 2010, NMFS added IMMS to the list of placement options for non-releasable sea lions. However, IMMS has been advised that its request stands last behind 20 other facilities who presumably are each asking for multiple animals. It is unclear if and when non-releasable animals will be available to IMMS. Moreover, nothing in the Marine Mammal Protection Act ("MMPA") requires an applicant for a take permit to await the results of an uncertain process before filing for and receiving that permit. Implicit in this comment is a question about the impact of the take on the wild population. In that regard, IMMS notes the 2007 Marine Mammal Stock Assessment Report for California Sea Lions ("Stock Assessment") sets the Potential Biological Removal ("PBR") for California sea lions at 8,511 based on a minimum population size of 141,842 and a likely population of 238,000. A removal of eight animals constitutes less than 0.1% of the PBR. Finally, it should be noted IMMS is proposing an alternative to collection from the wild which is to collect animals that have already stranded.

- *The applicant should be able to use debilitated animals like other zoos and aquariums do to highlight various conservation messages like entanglement, pollution, etc.*

Nothing in the MMPA requires the use of debilitated animals for public display. As noted above, the PBR for California sea lions is 8,511 and IMMS is seeking to take only eight. Although disabled animals can provide a valuable conservation message, these animals would not be the basis of a complete program, but rather something supplementary as there are other educational messages IMMS wishes to demonstrate. A few examples of these messages include (1) a sea lion demonstrating its long flexible neck and how it is an asset in the wild, (2) the difference in sea lion versus seal mobility on land, and (3) how a sea lion swims with its large, strong, front flippers. IMMS' approach is not unlike most other public display facilities that have healthy animals as a central part of their inventory, to which they add stranded, non-releasable sea lions.

- *The applicant should further explain why the Bonneville Dam large, adult, male California sea lions are not candidates for consideration.*

A detailed response to this comment was provided to NMFS when agency staff asked the same question in April before the application was published for public comment. That response was also posted online with the application for the public to see during the comment period. IMMS' answer remains the same, which is: "These animals are much too large (approximately 500 to 1,000 pounds) and aggressive, and are not easily trained because of their age, size, and behavior. They would require special protective mechanisms which our facility is not capable of providing, and therefore they would not be suitable for our program (described in section IV.C.3). In addition, they would likely present a danger to the safety of our staff and the public."

- *Given IMMS' involvement in the Deepwater Horizon Oil Spill event, how do those responsibilities affect the timeline for acquisition of sea lions?*

IMMS' Deepwater Horizon Oil Spill response activities do not affect the timeline for sea lion acquisition. IMMS has two separate facilities in which to house stranded animals under quarantine and animals maintained for public display. Sea lions would be housed in the public display facility and any turtles or cetaceans that IMMS rescues and rehabilitates would be cared for in our separate, large quarantine area. In addition, we have enough trained and qualified staff to care for the animals that are requested with this permit as well as those affected by the oil spill. With the oil well capped, this issue may not be that important or critical.

- *IMMS does not currently have any sea lions at their facility, so how will IMMS adhere to the APHIS regulations that specifically state that animals known to be social must be maintained with a conspecific or other compatible or related animal?*

IMMS has requested eight releasable California sea lions with this permit and will coordinate the acquisition of two young animals at the same time for the first take. This would meet the APHIS standard. In addition, if there are two non-releasable sea lions that meet IMMS' requirements and are available at the same time, IMMS is amenable to accepting those animals as stated in the permit application.

- *IMMS is requesting releasable animals and therefore is not "saving" any animals from euthanasia.*

The IMMS application is for a "take" permit. The mechanism for the take is to take releasable, stranded sea lions, thereby reducing the effort to collect them directly from the wild.

- *NMFS acknowledges that previous permits have been issued to retain releasable animals, most recently of which was Mystic Aquarium's request to retain releasable pinnipeds. However, the Aquarium (1) had a prior history of initially accepting non-releasable animals; (2) had been working cooperatively within the animal placement process; (3) provided solid justification for increasing their collection with a breeding plan; (4) provided a detailed timeline for acquisition of the new animals; and (5) established partnerships with other facilities prior to application submission.*

All of the activities that NMFS lists above (numbers 1-5) are things that public display facilities do, including IMMS. However, none of them are requirements for a take permit. IMMS has a new, recently constructed facility. IMMS does not yet have a marine mammal inventory and the facility/company with which IMMS worked (Marine Life Oceanarium/Marine Animal Productions) was destroyed in Hurricane Katrina. The animals were then sold by the majority business partner to the Atlantis Casino Resort in the Bahamas. IMMS has sought to develop partnerships with other public display facilities for the acquisition of sea lions, but no animals have been available.

- *The applicant is requesting that NMFS instruct west coast rehabilitation facilities to cooperate with and provide IMMS with records on candidate animals. Although stranding facilities are encouraged to cooperate with individuals authorized to receive animals for public display, they cannot be ordered to do so. It is recommended that the applicant be informed that it is their responsibility to form working relationships with those facilities that may be able to provide candidate animals.*

According to NMFS, until the point that stranded animals are deemed releasable or non-releasable, both the animals and the stranding rehabilitation facilities are under NMFS' domain. IMMS plans to work cooperatively with NMFS to identify stranded animals and is hopeful that NMFS will work with IMMS as California sea lions are stranded and available at the various facilities.

USDA Comments

- *“APHIS feels that if such permits are entertained by your office they would need to be take permits, as if the animals were being intentionally removed from the wild.”*

This permit application is for a take from the wild pursuant to the MMPA.

- *“There is a protocol in place to determine if an animal needs to be retained in human care for its own good (non-releasable), and given that there has not been a paucity of such designated animals, there does not appear to be any scientific or welfare justifications to retain releasable animals.”*

This statement is not accurate. There is a paucity of available animals for public display. IMMS has already attempted to obtain animals through other public display facilities and there are none available. Evidence of this paucity is further demonstrated by the fact that NMFS has at least 20 facilities waiting for non-releasable animals. If these facilities could have met their needs from an inventory of already existing animals, they would have done so. In addition to these facts, IMMS has specific requirements which may not be met by non-releasable animals. These requirements are described in the permit application in section IV.C.3.

- *“APHIS has been approached by multiple parties that question the fitness of the applicant to care for marine mammals under the Animal Welfare Act (AWA) (public display). These parties have raised issue with the care of the animals (veterinary) and*

the ability to place the animal's needs first. These issues appear to stem from the 2005 Hurricane Katrina loss of the facility and animals."

A basic tenet of American jurisprudence is that hearsay evidence is inadmissible. Neither the identity of the parties nor their specific allegations have been disclosed. More importantly, the cornerstone principle of American law is that people are presumed innocent until proven guilty, a party making allegations must prove their accuracy, and the accused has a right to confront his or her accusers and to refute their allegations. None of that is happening here. Unnamed persons are making unspecified allegations that have not been investigated as to accuracy and to which IMMS has not been afforded the opportunity to refute. The facts are that IMMS (and its predecessors) were at all times in compliance with APHIS standards and requirements. Indeed, conspicuously absent from APHIS' comment is any statement by APHIS that IMMS or its predecessors were in violation of APHIS regulations or requirements.

Hurricane Katrina was defined as the worst natural disaster to ever hit the United States. It obliterated most of the Gulf Coast of Mississippi and caused unprecedented property damage and human casualties. The north central Gulf region is very prone to hurricanes, therefore emergency management agencies had dealt with numerous hurricanes for decades. In spite of all the planning by all of these agencies, there was no way to deal with the cataclysmic catastrophe that was Hurricane Katrina.

Dr. Solangi's former employer, Marine Animal Productions (MAP)/Marine Life, had been in existence since 1956, and had weathered numerous hurricanes and tropical storms since its existence. Dr. Solangi had successfully prepared, and/or evacuated, for at least a dozen hurricanes since 1981, when he first started working for these companies. Some of the major storms that he had successfully led the company through included Hurricanes Elena and George.

The hurricane evacuation procedures for Katrina instituted by Dr. Solangi were more aggressive than any previous storm preparations. In accordance with MAP/Marine Life evacuation plans and protocols, six dolphins from low lying pools were moved to hotel swimming pools and eight sea lions and all of the tropical birds were crated and trucked to safety. Eight dolphins were left in a 30 foot high tank that had survived every prior hurricane, including Katrina. Some of the sea lions, as in all previous hurricanes, were left in pools that were on higher grounds with the ability to escape if the water rose.

The 34 to 38 foot tidal wave swept the dolphins into the Gulf from the 30 foot tank, which incidentally survived the storm. The pinnipeds that were left at the park escaped, and 12 of the 19 survived and were recovered. The eight dolphins that had been swept by the tidal wave were later recovered from the Gulf by MAP/Marine Life staff with assistance from various organizations. To blame Dr. Solangi for the catastrophe or the consequences of Hurricane Katrina is unfair and unwarranted. It defies and obfuscates the fact of the heroic efforts made by MAP/Marine Life staff, including Dr. Solangi, to save the animals in the aftermath of the worst natural disaster in U.S. history.

- *“APHIS does not support the contention by the applicant in the dolphin matter that it is under APHIS jurisdiction prior to NMFS determination of placement.”*

APHIS’ conclusion about the intent of the MMPA is outside its jurisdiction. The current permit is for sea lions and has nothing to do with the dolphin matter.

- *“The facility in Gulfport was built with Federal grants to become a stranding and rehabilitation center.”*

The purpose of IMMS’ new facility is misstated in the USDA/APHIS letter. The facility was built as the “Center for Marine Education and Research” with stranding response being but one part of the overall objective, not the exclusive and sole purpose.

- *The facility has not met APHIS requirements for licensure as a public display facility. Until the facility acquires public display animals, APHIS cannot comment on its ability to comply with the Animal Welfare Act.*

APHIS’ comment raises two issues. First, does the facility currently comply with APHIS standards to hold eight California sea lions? APHIS recognizes the answer is yes. Second, will the facility continue to comply? Here, APHIS makes the reasonable response, applicable to every facility, that no one can predict the future. However, if the past is prologue, then IMMS’ past record of compliance with APHIS standards indicates that future compliance will also occur.

- *APHIS is unaware of any California sea lions having been euthanized because the industry would not accept and care for the animals.*

According to NMFS data, in the seven years 2000-2006, 11,738 sea lions stranded in the southwest region of the United States. Of those, 4,204 were dead. Of the remaining 7,534, less than half, 3,678 were released. The remaining 3,856 went to rehabilitation facilities where they died, were euthanized, or were declared non-releasable. In addition, according to NMFS’ “Strike 3” policy, any sea lion that is released and restrands three times is automatically euthanized.

- *“Since there is no need to breed pinnipeds in captivity (even though they do it quite well), there appears to be no reason to retain healthy sea lions from the stranding network for such purposes. If they are not needed as public display animals (plenty in US to go around) nor as breeding animals, there appears to be no medical, behavioral, or scientific reason to keep these animals from returning to their own environment.”*

Contrary to APHIS’ assertion, there is a paucity of animals at United States public display facilities given that there is a list of 20 facilities waiting for non-releasable sea lions because they could not acquire sea lions from existing holders. If APHIS is aware of California sea lions that are available, given APHIS’ assertion that there are plenty of them to go around, APHIS should so advise NMFS in order to address the needs of the 20 facilities seeking such animals. Finally, there are no AWA regulations preventing facilities from breeding animals under the permit holder’s care.

Marine Mammal Commission (MMC) Comments

IMMS appreciates the approval of the IMMS permit request by the MMC. In response to the MMC letter, IMMS has the following comments.

- IMMS has a new facility with no animals and a take permit is the appropriate way to acquire animals. As a stranding network participant, IMMS understands, respects, and supports that principle. However, the MMPA and its legislative history recognize and endorse the public display of marine mammals to promote their conservation through public education and research. The MMPA also provides for the taking of marine mammals for that public display. IMMS has applied for such a take permit. In applying for that permit, IMMS is asking to collect animals from the wild. However, given the large number of California sea lions that strand, 7,534 California sea lions stranded alive between 2000-2006, and given that stranding is not the normal life cycle event for a sea lion, IMMS is willing to substitute stranded animals for captures from the wild and is willing to accept non-releasable animals in good health. There is no need, nor is there legal authority, for imposing a wait period to collect animals. That said, IMMS is prepared to work with NMFS to identify appropriate animals for collection, the final decision in that regard resting with IMMS.
- IMMS will consult with APHIS about transport and maintenance of the requested animals.
- IMMS' new facility is located three miles from the coast and is about 20 feet above sea level. With the evacuation plans that are in place, which include transporting the sea lions by covered truck out of the facility to a safe location, the probability of any sea lions being introduced into the Gulf of Mexico is remote.
- IMMS' education program is consistent with the requirements of NMFS' public display permits and the education programs planned for sea lions are consistent with every other public display facility in the United States. If IMMS' program is inadequate, then so too are most programs at other public display facilities. In that regard, meet and greet programs are a small part of the overall educational programming that IMMS will conduct.
- IMMS currently holds a USDA/APHIS Exhibitor's License and meets all requirements of the USDA. In accordance with this license, IMMS has an adequate contingency evacuation plan. As always, IMMS plans to abide by all the care and maintenance standards that APHIS has for marine mammals.
- The application is for a take permit. Once an animal is removed from the wild, it falls within the jurisdiction of APHIS. Pursuant to the 1994 MMPA amendments, NMFS lacks the statutory authority to regulate any breeding activities relating to animals at public display facilities.

The Marine Mammal Center Comments

The newsletter quoted in and attached to IMMS' permit application as Appendix D speaks for itself. It highlights the dilemma of stranding facilities that care for extremely high numbers of stranded animals, including the fact that some animals are euthanized. IMMS' permit application is for a take pursuant to the MMPA which allows public display facilities to acquire healthy animals from the wild. Rather than apply for a permit to take healthy sea lions directly from the wild, IMMS' permit request is to take eight animals that have already stranded.

Michael Moore, *et al.* Comments

Dr. Michael Moore's paper speaks for itself. It highlighted the dilemma of returning stranded animals to the ecosystem which may have rejected them. IMMS' permit application is for a take from the wild, and is authorized pursuant to Section 104 of the MMPA, 16 U.S.C. 1374. Therefore, a permit to take animals is not circumventing or subverting any NMFS regulations as suggested by Dr. Moore. California sea lions from all sources will be considered, including non-releasables if they are available. The only exception to this would be the Bonneville Dam, large adult males discussed above (and in the permit application responses to NMFS' questions). Instead of collecting animals directly from the wild, IMMS' method of take will be to acquire releasable stranded animals. Such a permit was issued to Mystic Aquarium in 2007.

WSPA Comments

- ***“Legal Issues:*** *According to Title 50 CFR Part 216.27, a rehabilitated marine mammal must be released back into the wild within six months of capture if it poses no threat to wild populations, the animal is physically and behaviorally healthy, and it is likely to survive if released.”*

The above-referenced section from the regulations describes activities permitted under Stranding Agreements, but does not have a bearing on the permit application submitted by IMMS. The IMMS permit application is for a “take” authorized by Section 104 of the MMPA, 16 U.S.C. 1374. The permit application has nothing to do with NMFS' regulations regarding stranded animals except that IMMS is suggesting that its method of take be to collect animals that have already exhibited the abnormal behavior of stranding, or that have stranded for other reasons. If commenters who have confused the stranding regulations with a section 104 take permit think it preferable for IMMS to collect animals from the wild that have not stranded, IMMS is prepared to discuss that with NMFS.

- ***“Proper Role of Stranding Networks and Rehabilitation Facilities:*** *As an active participant of the National Stranding Network, IMMS should meet these expectations by focusing on the successful rehabilitation and release of stranded marine mammals, not on maintaining releasable animals for public display purposes.”*

IMMS does indeed meet those expectations with the cetacean rescue and rehabilitation work that it performs. In addition to the research and conservation work that IMMS does with strandings and wild dolphins, IMMS conducts educational programs and holds an APHIS Class C Exhibitor's License for public display. There is no law that states an

organization cannot participate in both public display activities and stranding conservation work with marine mammals. There are multiple organizations in the United States that participate in both arenas such as Sea World, Gulf World, Marineland, The Georgia Aquarium, and Mystic Aquarium.

- ***Inconsistent Conservation Message:*** “*In reality, removing eight individuals would not be sufficient to alleviate any natural intraspecific competition for food among individuals in the wild population. For instance, Potential Biological Removal (PBR) is 8,511 based on a minimum population size of 141,842. Keeping these eight individuals would do nothing for conservation or management of the species and, in fact, would only be harmful to the individual animals involved.*”

The requirement for a take permit set forth at 50 C.F.R. 216.34(a)(4) is that the proposed activity by itself or in combination with other activities will not likely have a significant adverse impact on the species. Taking eight animals that have potentially, if not actually, already removed themselves from a population of 238,000 animals is not likely to have a significant adverse impact on the population. In that regard, it should be noted that NMFS has established a PBR for California sea lions of 8,511 per year.

- ***Lack of Educational Value and Ethics of Captivity:*** “*WSPA seriously questions the value of any information disseminated through programs displaying releasable animals in captivity. Viewing captive marine mammals, particularly those trained to interact with humans or to perform ‘tricks,’ give the public a false picture of the animals’ natural history, constituting a form of miseducation at the outset. Furthermore, it reinforces a dangerous public misconception that it is appropriate to physically interact with marine mammals.*” *In addition, there are serious ethical issues with animals in captivity.*

The views of WSPA and other commenters about the merits of public display are an issue for Congress. They are not relevant to this permit application. The MMPA and its legislative history support and endorse the public display of marine mammals. In 2001, the Alliance of Marine Mammals Parks and Aquariums ably traced the history of the MMPA on this issue, demonstrating that Congress has already resolved the issue WSPA and others wish to raise. The Alliance’s comments are quoted below in their entirety.

The Marine Mammal Protection Act (“MMPA” or “Act”) was passed in 1972 largely as a result of public concern about the mortalities of marine mammals caused by activities such as sealing, whaling and commercial fishing. At the same time, Congress recognized the invaluable role served by the public display of marine mammals. Marine mammal public display facilities are visited by millions of people annually and are essential to carrying out the purposes and policies of the Act. The public display of marine mammals stimulates public interest in, educates about, and creates support for, marine mammal conservation. Congress also recognized the important role of public display institutions as “resources of great international

significance, esthetic and recreational as well as economic.” 16 U.S.C. § 1361(6). In fact, Congress has given public display a special status under the Act, making it an exception to the general moratorium on takings. 16 U.S.C. § 1371(a)(1).

These considerations are reflected in the Congressional deliberations on the Act. For example, Senator Hollings stressed that without observing marine mammals in oceanaria the “magnificent interest” in marine mammals will be lost and “none will ever see them and none will care about them and they will be extinct.” Ocean Mammal Protection: Hearings Before the Subcommittee on Oceans and Atmosphere of the Senate Committee on Commerce, 92nd Cong., 2d Sess., 266 (1972) (“Senate Hearings”). “If it were not for these organizations and the public exposure you have on these animals in the first place, these matters wouldn’t be brought to the attention of the public.” *Id.* at 555.

Senator Gurney lauded the “advent of seaquariums and oceanariums” that have brought home “a much greater awareness of ... ocean mammals.” 118 Cong. Rec., S25,291 (daily ed. July 25, 1972). Stressing “the valuable educational service performed by these institutions,” Senator Cranston agreed that any moratorium on the take of marine mammals should include an exemption for “reputable zoo and oceanaria.” Senate Hearings at 552-553. Senator Chiles stated that he gave:

strong support towards recognizing the oceanarium-exhibition industry in this legislation. . . . Children by the millions, either on school field trips or accompanying their parents, have become exposed to the wonders of marine animals.

Senate Hearings at 164.

During the consideration of the 1988 amendments to the Act, Congress reaffirmed the importance of public display and scientific research, strongly endorsing continued issuance of permits for these purposes. The House Committee report stressed:

[E]ducation is an important tool that can be used to teach the public that marine mammals are resources of great aesthetic, recreational and economic significance, as well as an important part of the marine ecosystem. It is important, therefore, that public display permits be issued to entities that help inform the public about marine mammals, as well as perform other functions.

H. Rept. No. 970, 100th Cong., 2d Sess., 33-34 (1988).

Similarly, the Senate Committee Report stated:

[E]ffective public display of marine mammals provides an opportunity to inform the public about the great aesthetic, recreational, and economic significance of marine mammals and their role in the marine ecosystem.

S. Rept. No. 592, 100th Cong., 2d Sess., 29 (1988). The Senate Report also stated:

The Secretary's determination should be guided by the fact that it is not the intent of this legislation to prohibit the display of marine mammals in zoos, aquaria, or amusement parks that comply with applicable regulations and standards. The Committee recognizes that the recreational experience is an important component of public display and that public display has served a useful educational purpose, exposing tens of millions of people to marine mammals and thereby contributing to the awareness and commitment of the general public to protection of marine mammals and their environment.

Id.

In 1994, when Congress again considered amendments to the Act ("1994 Amendments") affecting the public display of marine mammals, Congress again reaffirmed the importance of public display. The Report of the Senate Committee on Commerce, Science, and Transportation accompanying the legislation which became the 1994 Amendments to the Act stated:

Dolphins, sea lions, and other marine mammals are popular displays at public zoos and aquariums across the United States. The MMPA recognizes that this display provides an important educational opportunity to inform the public about the esthetic, recreational, and economic significance of marine mammals and their role in the ocean ecosystem.

S. Rept. No. 220, 103rd Cong., 2d Sess., 4 (1994).

The public display provisions which became the text of the 1994 Amendments were developed through a negotiated process and virtually identical texts were added to the underlying House and Senate bills. The Senate text was added via a floor amendment offered by Senator Exon. In support of the amendment, Senator Exon stated:

In 1992 alone, over 108 million people visited American zoos and aquariums. In fact, I can think of no better form of family entertainment and education. Research has shown that wildlife public display programs are not only educational, they enhance public commitment to conservation

America's public display institutions are playing an absolutely critical role in the conservation of marine mammals and endangered species. They have taken their responsibilities to the public, their animals and future generations very seriously. Self-regulation among America's zoos, aquariums, and marine parks significantly exceeds minimum federal and state standards.

Cong. Rec., S.3302 (daily ed. March 21, 1994). Senator Lott echoed Senator Exon's sentiments stating:

Public display and scientific research institutions in Mississippi and throughout the United States play an essential role in marine mammal conservation. Over 100 million people annually visit such institutions and learn about the conservation of these magnificent creatures This amendment . . . reaffirms the role of public display in increasing public awareness and understanding about marine mammals.

Id. at S.3300.

Frank Murru Comments

Mr. Frank Murru, representing the Atlantis Casino Resort in the Bahamas, was involved in the acquisition of Marine Animal Production's ("MAP's") dolphins and sea lions after Hurricane Katrina. This was a contentious issue between Dr. Solangi and his former business partner and the matter was in litigation. The MAP animals were always under the care of an experienced veterinarian. The animals were healthy prior to Hurricane Katrina and were maintained in good health after Hurricane Katrina, even under the most severe conditions. The animals' successful rescue, and subsequent care and transport to the Bahamas, are a great tribute to the former MAP staff. Mr. Murru's comments about veterinary care do not reflect the fact that regular APHIS inspections of the MAP facility, its animals, and its record of treatment did not reveal any issues with the veterinary care of the animals. Currently, IMMS is in good standing and holds a USDA exhibitor's license.

Animal Welfare Institute Comments

- *Keeping healthy releasable animals in captivity purely for breeding and public display purposes is absurd and contravenes federal regulations. Marine conservation is not*

furthered by educational programs at public display facilities. AWI urges NMFS to deny the applicant's request because it is illegal and would set an incredibly dangerous precedent. It is clear that the applicant is attempting to create a new method of obtaining animals for public display.

As discussed above, the permit application is for a take authorized by Section 104 of the MMPA. It does not contravene NMFS' separate regulations regarding stranded animals. The commenter's concerns about the merits of public display generally are incorrect and have been addressed above. As to the precedent issue, Congress has already addressed this in the MMPA, specifically providing for the issuance of take permits for public display. Further, the method of take provided for in the permit is not new as a similar permit was issued to Mystic Aquarium in 2007.

WDCS, Cetacean Society International, and Humane Society (HSUS) Comments

These commenters variously (1) assert the take permit application violates NMFS' stranding regulations, (2) oppose the public display of marine mammals, (3) assert that granting this permit is a precedent, (4) IMMS should only receive, and wait for, stranded animals that would otherwise be euthanized; (5) IMMS cannot ask NMFS to assist it in identifying stranded animals that might be available, and (6) IMMS fails to meet APHIS standards. All of these issues have been addressed above.

These commenters also variously argue that (1) removing eight animals from the wild will not reduce the risk of disease in the wild population, (2) removing eight animals will not eliminate overcrowding at Bonneville Dam, (3) animals strand for many reasons and are not rejected by the wild, and (4) removing only eight animals will not result in a change in violence by humans toward sea lions. None of these comments go to the legal standard in 50 C.F.R. 216.34 that any take be "not likely" to have a "significant" adverse impact on the species. Indeed, conspicuously absent from these and all other comments is any analysis of how the removal of eight California sea lions from a population of 238,000 with an annual PBR of 8,511 that is at carrying capacity for pups, according to the NMFS Stock Assessment, is likely to significantly adversely affect the population.

Furthermore, although these and other commenters discuss the various reasons for strandings, no commenter asserts that strandings are normal behavior. Equally important, and given that the MMPA authorizes the taking of animals from the wild, including healthy animals, no commenter argues that the applicant's proposed method of take from the pool of stranded animal(s) is not preferred to captures from the wild.

Finally, HSUS cites to an inspection of IMMS' facility on April 26, 2010 by representatives of NMFS and APHIS regarding the retention of a dolphin. The issues raised were fully responded to in the context of the dolphin at issue. Moreover, IMMS is in compliance with all applicable APHIS regulations and has a USDA/APHIS Class C Exhibitor's License.

Alliance of Marine Mammal Parks and Aquariums Comments

The Alliance takes no position on the permit application but supports the activities of the stranding networks, as does IMMS. Although not raised in the Alliance comments, it is important to remember that the permit application is for a “take” that is not covered under routine stranding rescue, rehabilitation, and release activities. The application is for a take from the wild authorized by Section 104 of the MMPA, 16 U.S.C. 1374. It does not circumvent or subvert any NMFS regulations. Instead of collecting animals directly from the wild, the method of take would be to acquire releasable stranded animals from stranding rehabilitation facilities. Such a permit was issued to Mystic Aquarium in 2007. Therefore, approval of this permit request would not be setting a precedent, and it is not a “test case.”

Sara McDonald Comments

This commenter states that she is a former NMFS employee. She does not know the complete facts about MAP and Hurricane Katrina, nor does she appear to understand the type of permit that is being applied for. The response to the Katrina issue is presented in our comments to the USDA.

Comments By Former Employees and Others

Jeff Siegel is a disgruntled former employee and none of his concerns are substantiated. Hurricane Katrina was the worst natural disaster in U.S. history. Unprecedented and extreme measures were taken to protect the MAP animals, especially the vulnerable. These measures are further explained above under the section with comments from USDA and APHIS. No amount of preparation could have saved the facility or the coastal community that was completely devastated from this catastrophe. In spite of unprecedented conditions, all the dolphins were rescued as were 20 of the 27 pinnipeds.

Joe Stevens is a retired fisherman who worked with Marine Life Oceanarium in the 1980's. Every collection trip that MAP took for collections had a federal observer onboard. No observer filed a complaint or alleged improper procedures were employed, contrary to Mr. Stevens' allegations. Further, Mr. Stevens' comments are not relevant to IMMS' permit application, which does not include captures in the open ocean.

Eydie Proffitt is a former employee of MAP from the 1980's and has never worked for IMMS. None of her comments are germane to the legal standards in 50 C.F.R. 216.34.

Paula Carrigan is a former bookkeeper of Marine Life Oceanarium. She has no firsthand knowledge or expertise from which to comment on the veterinary care of marine mammals. MAP animals were always under the care of an experienced veterinarian in full compliance of AWA regulations.

Terri Miles was employed as a secretary at MAP during the 1980s. She has never worked for IMMS. She has no first-hand knowledge of, or expertise from which to comment on, the veterinary care of marine mammals.

Laura Bottaro, a former Oklahoma City Zoo employee, notes IMMS has “a good educational plan.” However, her comments regarding veterinary care of MAP’s animals in the 1980s and 90s are beyond her expertise as she is not a veterinarian. Further, she has never worked for IMMS and none of her allegations are substantiated. MAP’s animals at the Oklahoma City Zoo were cared for by an experienced veterinarian, who at one time served as the president of the prestigious organization, the International Association Aquatic Animal Medicine (IAAAM).

Holly Edwards is a former employee (trainer) of a different organization of which Dr. Solangi was a part approximately 16 years ago. None of her allegations are substantiated. Further, during the period of her employment, 1986 to 1994, MAP remained in compliance with USDA regulations. The animals were always under the care of a licensed veterinarian. Ms. Edwards is not a veterinarian and is not qualified to make the assessments that she is stating about medications. The current IMMS facility is in full compliance with APHIS regulations.