MARINE MAMMAL HEALTH AND STRANDING RESPONSE PROGRAM

PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT

PUBLIC HEARING

SAN FRANCISCO

Monday, April 2, 2007

REPORTER: PATRICIA M. ABALOS, CSR 13128           Job 4927
BE IT REMEMBERED THAT, on Monday, April 2, 2007, commencing at 1:15 p.m. thereof at BAY CONSERVATION AND DEVELOPMENT COMMISSION, 50 California Street, Suite 2600, San Francisco, California, before me, PATRICIA M. ABALOS, a Certified Shorthand Reporter, the following public hearing was held:

MS. HOWLETT: We thank you guys for coming to the Marine Mammal Health and Stranding Response Program Programmatic Environmental Impact Statement public hearing. We're going to give a formal presentation followed by a formal oral comment period. After the comment period ends and we stop taking notes for the public record, there will be an informal QA session where you can ask any of us questions.

I'm Sarah Howlett, and all you guys know Sara Wilkin. So the purpose of our meeting today is to present an overview of the information that is contained in the draft, PEIS, and to give you the opportunity to give us comments on the PEIS, and also to discuss the next steps that NMFS will be taking in revising and finalizing the PEIS.

This is our first public hearing. We will have one tomorrow in Seattle, Friday in Silver Spring.
and next week in Boston, and in St. Petersburg.

Everybody, I think, has already signed in. If you
wanted to make an oral comment, we hope that you also
noted that you wanted to. We will also be accepting
written comments today, and transcripts of today's
meeting are being captured by our court reporter.

I'm going to give a little bit of background
on the National Environmental Policy Act, otherwise
known as NEPA. If you were here last year, you probably
heard this before. NEPA requires federal agencies to
analyze the potential environmental impacts of their
actions or a major federal action.

This just means they need to consider the
environmental consequences during their decision making
to reduce, prevent, or eliminate environmental damage.
NEPA also requires federal agencies to provide
opportunities for public involvement. This is obviously
one of them. And the scoping process which was held
last year in January here also was an opportunity for
public comment.

It's important to note that NEPA does not
dictate the decision to be made any NMFS, but it helps
to form the decision-making process.

So why are we preparing a PEIS? It's NOAA
policy to prepare the PEIS for a major federal action,
and that may be one that is the subject of significant
public controversy, it may have uncertain environmental
impacts, and may establish a precedent and principal
about future proposals, it may result in cumulatively-significant impacts, and it may have adverse effects on threatened and endangered species or their habitats.

Just to clarify what a PEIS is versus an EIS, an EIS focuses mainly on one action or projects, while a PEIS is a more comprehensive document that considers the impacts of a number of related actions or projects. It analyzes a broad scope of actions and the general environmental consequences of each action. So if you look at the document, you know that we aren't very specific on impacts to an individual animal or individual place in the U.S.

This is the EIS process flow chart. As I said, the Notice of Intent was published December 28th, 2005, and that started our scoping period where we collected comments from the public. We took these comments into account when we started our environmental analysis and drafting of the PEIS.

The draft PEIS was published in the federal register on March 16th, 2007. So now we are here, the public comment period, which lasts for 45 days. And that will end April 30th. Then after that, the final PEIS, another public review for 30 days and the NMFS will issue its Record of Decision, also known as a ROD. Just to kind of go on that, the next step, as I said, April 30th, is when the public comments on the
draft document are due. Once NMFS gets all these comments, we'll review them and merge the comments as we see necessary as they correspond to the document. We will respond to everybody who has commented to let you know what we have done with your comments, and then we will finalize the PEIS.

We will issue the final PEIS for a 30-day public review leaning more towards June 2007. And it's important that NMFS does not have to respond to comments during this period. If people want to comment, they can, but we don't have to respond. Then we'll publish the Record of Decision June 2007.

The Record of Decision is just a document stating NMFS' decision on the alternatives that we've chosen, why we have chosen those and not other alternatives, and the timeline for other implementation.

If you have looked at the document, you pretty much should probably already know what it looks like. The Section One of EIS is the purpose and need for the proposed action and also a description of the proposed actions.

Section Two is a lengthy list of alternatives that we have developed for stranding response, carcass disposal, rehabilitation, release, disentanglement, and our biomonitoring and research activities.

Section Three is the affected environment.

And these are the areas that could be impacted by our
actions which include the biological resources as well as water and sediment quality, cultural resources, public health and safety, and socioeconomics.

Section Four, the environmental consequences or the impacts our actions may have on those areas listed in the affected environment.

Section Five provides mitigation. So when you're looking at Section Four, we lay out all the impacts, not considering things that we might be doing to minimize those impacts. Those are the mitigation measures lining Section Five. Those will be the things that NMFS and the network of people involved in the

MMHSRP do to minimize the impacts listed in Section Four.

Section Six are the cumulative impacts, so what our actions plus other actions going on along with U.S. coastline will have on the environment.

I will turn this over to Sarah who will give some background on the proposed actions and the preferred alternatives.

MS. WILKIN: All right. Our proposed action or the federal activity that we're conducting is kind of an impetus for this document -- are there's many different aspects of it. But the big one is the issuance of the policies and best practices for mammal stranding response rehabilitation and release.

These are presented as an appendix to the document and include the new minimum evaluation criteria
for stranding agreements, the stranding agreement template, rehabilitation facility standards, the release criteria, the disentanglement guidelines. Currently, those are in draft or interim form. But with the completion of this EIS, we plan to issue them as final.

The second is the issuance of the MMHSRP Endangered Species Act, Marine Mammal Protection Act Permit. Currently, the program holds a permit that allows it to conduct activities on endangered species which are not encompassed under MMPA. It's an umbrella permit for the network, again, for those ESA species. And it also includes many portions that are devoted to research and biomonitoring.

The third is the renewal or an issuance of stranding agreements on a case-by-case basis, and then finally other day-to-day operations would continue. And these are all federal activities. These are from the federal perspective, what we're doing where activities are concerned. But that includes release, determinations, and guidance and instructions for response and rehabilitation.

Now I'm going to go over just the preferred alternatives. As Sarah said, in the alternative section of the document we lay out a whole sweep of different ideas that we kind of consider. And then we have chosen one in each case. It's kind of the preferred or what we really want to do.

In the case of stranding agreements and
response, the current alternative is A4. It involves a couple of things. First of all, the stranding agreement template will be used nationwide for the next time that your stranding agreement is renewed or issued. This is actually already beginning to be implemented in many of the regions and will be nationwide once this is published. So the next time your stranding agreement is renewed, you'll see it in possibly a slightly different format than you're used to, but it should be relatively the same.

The final stranding agreement evaluation criteria, again, would be implemented for the next time the stranding agreement is renewed or issued. So this document contains a list of evaluation criteria that the next region will use to assess the qualifications for conducting the activities that they're going to be authorized to do, so response, rehabilitation, et cetera.

The current activities of the stranding network would continue with the ability to add new or adaptive activities if necessary. So again, your day-to-day operations will probably go along much as they do right now. But if something comes up -- developments in science, developments in practices, that we want to add new activities -- we can do so. If they are not covered under the impacts that are currently being assessed, then we would do a supplemental document to this programmatic document.
Carcass disposal, the preferred alternative is B3. This involves a recommendation to transport chemically-euthanized carcasses off site for disposal.

Our preferred methods of disposal are incineration, landfill, or other methods such as composting once the composting has been assessed to determine what the impacts of that are.

Again, this is a recommendation, so we understand that it may not be logistically feasible to transport a chemically-euthanized carcass especially when they're a large animal. But when at all possible, it should be done. Animals that die naturally or are euthanized by other means may be disposed of by whatever means are feasible and allowed in the geographic area where you are.

Under rehabilitation activities, the preferred alternative is C3. Current rehabilitation activities would continue, so the facilities that are currently part of the network would continue to be part of the network. It also gives us the ability to designate new rehabilitation facilities and modify rehab activities as necessary, so in geographic areas where they currently don't exist.

Secondly, the final rehabilitation facility standards would be implemented and then enforced to what we have listed as the minimum standard via an inspection program. Our plan right now is phase this in over three years. That's kind of discussed in the document. So it
would be final and actually would take effect in about three years from the issuance of a ROD. This is something you can comment on.

FEMALE SPEAKER: May I ask a question? So once the whole ROD thing goes through, is this then a legal document or just recommended -- I'm confused about what it actually does.

MS. WILKIN: The EIS is kind of the objective analysis of here's your activities and here's their impacts. The ROD is us saying, all right, we've looked at the EIS and it's told us all these, so here's our decision, here's what we're going to do, here's how we're going to implement it, here's how we're going to take into account all the things that the objective EIS is kind of recommending that we do.

Under release of rehabilitated animals in D3, again, current release activities would continue with the ability to modify release activities as necessary. But also the release criteria would be implemented effective immediately prior. So prior to making a release determination, the regional coordinator would be making their decision-making process using the criteria.

For disentanglement, the preferred alternative is E3. With the current activities, the disentanglement network would continue and the ability to add new
participants and modify activities and technologies as necessary. Again, if those modifications would fall outside the scope of the impacts that we've looked at, then we would have to reassess them. But for the most part, a lot of technology changes don't necessarily fall outside of the scope.

Disentanglement of small cetaceans and pinnipeds would continue under new stranding agreements as is taking place now. We would have the ESA MMPA permit to the program -- would authorize current and future disentanglement activities for endangered and threatened species which otherwise aren't authorized.

Again, under this alternative the East Coast network would continue their current activities. The West Coast network would be modified slightly to coordinate structure and training effective immediately. This is already ongoing with a lot of the trainings that have been occurring, so a continuation of that. And then the Disentanglement Guidelines and training prerequisites document would be implemented nationwide under some eased-in approach.

Finally, for the biomonitoring and research aspects, preferred alternative is F3 where the Protected Resources Division 1 would issue our program a new AES MMPA permit to include current and future biomonitoring and research activities.

Just a note that if the permit cannot be
issued prior to the expiration of the current permit, the current permit may be amended or extended to cover the date back until a new permit can be issued. That's the preferred alternatives that we've selected.

I just wanted to briefly talk about mitigation which is Section Five of the document. Mitigation is defined as -- the purpose is to avoid, minimize, or eliminate the negative impacts from proposed action. So wherever we have identified a significant impact from the alternative, then we've also proposed a mitigation measure that would help avoid, minimize, or eliminate it.

These are some of the examples in sensitive or protected habitats. The stranding network members would coordinate with responsible authorities. Stranding response activities, qualified personnel would be used for capture and restraint.

The uses of standards and protocols play into mitigation in a big way. Basically, you all should take a pretty significant look at the mitigation measures because this is kind of what the agency is considering committing to, both on our behalf and also for the stranding network and also for the disentanglement networks.

MS. HOWLETT: So that's our presentation. It is time for oral comments.

MR. WILSON: Could we take a five-minute break?
MS. HOWLETT: Sure.

(Recess taken.)

MS. HOWLETT: Our court reporter will be recording your comments. Also, your written comments are also welcome today. You can hand them in today. We also have comment sheets up front that you can write on, or you can submit them to us by mail or e-mail. I believe we have on the handouts -- we also have our information for you to send them to. We just ask for written and verbal comments, that you bring very specific concerns regarding the content of the draft document. And please suggest civic changes to alternative environmental consequences that NMFS should consider.

MR. FOLKENS: You want a written response in addition to the oral?

MS. HOWLETT: No. If you just want to give oral, that's fine. If you think of something that you didn't give us, you can feel free to write it down. Just to let you know that additional information is also available via public libraries, and it's available on our NMFS web page. If you comment today, you will get a copy of the final document. But if you're not commenting and you want a copy, please feel free to check up on our sign-in sheet if you would like one. We can begin.

MR. FOLKENS: This is Peter Folkens from the Alaska Whale Foundation. I have four specific items to
First one pertains to the recognition of stranding agreements across regions. Due to an ongoing research affiliation at University of California, Davis, a number of Alaska Whale Foundation personnel went over into the San Francisco Bay Area from October to May.

We keep two of our six boats here as well. They are assigned at the moment to Contra Costa County Search and Rescue team. In southeast Alaska, we now see more whale entanglements in one season than the southeast region has experienced in a decade.

The Alaska Whale Foundation boat, disentanglement equipment, and expertise can be put to good use in Northern California. However, in a recent Alaska stranding network meeting in Anchorage, it was pointed out that stranding agreements are not recognized across regions.

Under the notion of best practices, we recommend that the National Marine Mammal Health and Stranding network implements a policy and procedure to either recognize stranding agreements across regions or issue additional stranding agreements to singular organizations that typically cross multiple jurisdictions.

Item 2. Since the 9/11 and Katrina disasters, the federal government has implemented policies and procedures for the standardization of roles and training levels of responders. This has taken the form of the
ICS 100 and NMFS 200 response management protocols for all types of official responses. I understand the National Marine Fisheries Service employees are trained to these standards.

At a recent Alaska Marine Mammal Disentanglement Network meeting in Anchorage, the question was raised about ICS training. It turns out that everyone in attendance except one has had ICS 100 training. It was also mentioned by Robert Mahoney from the NMFS office in Anchorage that the disentanglement network follows a de facto NMFS kind of structure. It's my suggestion that an ICS 100 structure be officially part of the entanglement responses across regions.

Item 3. In a related issue, responder typing at the federal and state levels is a 1 to 4 hierarchy with 1 being the highest certification. However, the National Marine Fisheries Service disentanglement response training typing is backwards with 1 being the lowest level of training. Since such responses often include the U.S. Coast Guard and other official government entities that follow the other ICS and NMFS typing protocols, I recommend that National Marine Fisheries Service flips its type numbering so that 1 is at the highest level with perhaps a 1A designation for specific right whale responders.

Item 4. For many years, the standard training response data form was one from the Smithsonian Institution designed by comparative anatomists. As the
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Marine Mammal Protection Act and National Fisheries Office of Protective Resources began to play a bigger role in such events, the response data forms became heavily focused on soft tissue sampling, probably largely due to expertise of the veterinarians that were taking major positions at the federal level.

Unfortunately, this was at a near-complete disregard for anatomical and morphological data. Here I requested the National Marine Fisheries Service incorporates more anatomical data on its Level A data form. Towards that end, I have offered a couple of solutions that meet the needs of both the soft tissue collectors and the comparative anatomists. I have copies here that I've given to a few people and I can give for the official record.

To give you an example of a real world situation in which a better data form would have saved literally hundreds of thousands of dollars for the government, I was involved as an expert witness in a ship strike event in which if the original stranding data were taken better and with a more forensic line and morphological and anatomical data, it is unlikely that there would have been litigation over that event, saving literally hundreds of thousands of dollars both for the government and the private sector.

So I feel very strongly that the Level A data form needs to include more forensic, morphological information. Are there any questions?
MS. WILKIN: Thank you for your comment.

MR. FOLKENS: You'll notice in the Level A data form, the backside says "additional comments." And that's something that can be done quite efficiently by saying, use a separate page for additional comments. And then we can take the morphological data that the Smithsonian likes and incorporate that on the back side Level A data form.

To further that notion just a little bit, back almost two decades ago, Steve Leatherwood and myself put together largely what you see in the stranding data forms for the National Marine Sanctuaries Program, specifically for the Channel Islands National Marine Sanctuary. In the back of this, we had several examples of marine mammal stranding forms that would approach the historical and traditional Level A data information that's important to morphologists -- nowadays with the increase in ship strikes, people who do mechanics of injury reconstruction and so on. I think it would be very, very useful on the national level to have a better Level A form that could help us with ship strike litigation.

FEMALE SPEAKER: What do they use the data for? I've always been told that these measurements, which we always take anyway, would be only used for species identification.

MR. FOLKENS: I don't know if you know my history, but I use it lots of different ways. But
you'll notice that the illustrations that are here -- an individual can indicate evidence of potential injury points, places of blunt force trauma. In the example of the ship strike that I was involved in as an expert witness, they did not document the impact plan.

Consequently, the veterinarian worked on it, made a decision based on what they saw internally rather than what they saw externally, and got the point of contact on exactly the wrong side of the whale. It was a mechanics-of-injury thing. It was a lower occipital violation that was caused by leveraging of the head as opposed to the shaking of the head.

FEMALE SPEAKER: But you think the measurements would have detailed that? Or you need to have a wound sheet or something?

MR. FOLKENS: You see the picture?

FEMALE SPEAKER: Yeah.

MR. FOLKENS: Indicating where that happened and getting precise measurements would make it -- in other words, if you drew a picture on that form and you said we think there's a possible contact injury here, the measurement could be done and it would facilitate a forensic osteologist like myself to indicate the mechanics of injury to demonstrate quite easily how the internal damage could have been caused by the type of contact injury. That's the kind of point -- I'll pass this around.

MR. WILSON: My name is Bob Wilson, policy
liaison for the Marine Mammal Center in Sausalito, California. First of all, I'd like to commend the agency on all your time and hard work that you've put into this effort. We realize how much effort this does take.

Now, that stranding programs are important I think is demonstrated by the vast public support that the Marine Mammal Center here in the Bay Area has received as evidenced by our current construction of our 25 million-dollar facility.

We support the four major proposed actions in the effort. The first is the issuance of a new EIS and MMPA permit to the program as a whole, continuance of current operations, renewal of stranding agreements, continuation of Prescott Grant Program, and the issuance of the policies and the best practices manual.

As to stranding activities, we support the preferred alternative A4, which is issuance of stranding agreement criteria, use of the standard template for stranding agreements. However, we read into that alternative that there will be flexibility in the regions in negotiating stranding agreements to take into account local issues so that they meet the general purposes of the MMPA.

As to carcass disposal, we support alternative B3, the off-site disposal. We did not build a graveyard in our new facility. As to rehabilitation activities,
we support preferred alternative C3 and the
implementation of those final rehabilitation facility
standards. Our new facility was based on the current
recommended standards, so we hope there are not major
changes in those.

As to release alternatives, we support
preferred alternative D3 and issuance of those final
release criteria. We've worked in the past on the
development of those standards. There have been a
number of meetings and issuance of publication. We're
in conformity with those and we support those.

As to the disentanglement network, we support
the preferred alternative E3, and as to biomonitoring
and research activities, we support the preferred
alternative F3. Thank you for the opportunity for
comments.

MS. WILKIN: If that's all for formal
comments, then we'll go ahead and end.

MR. FOLKENS: If I could add another comment.
Once again, raising an issue of the use of divers in
entanglement responses. So far, no official stranding
authorization holder has ever used a diver in the water
in a disentanglement action.

However, there's been a number of situations
in which general public divers have gotten in the water
and have actually effected a successful disentanglement.
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We do not necessarily encourage that sort of thing, certainly in the light of the individual -- and I think it was someone in Australia who was killed trying to do that.

However, the information coming from disentanglement in which divers were involved in showing that there is a level of efficiency that can be accomplished by using a properly-trained diver. The Alaska Whale Foundation, we have two certified rescue divers and a rescue diver instructor within our ranks. We would never use them in a disentanglement because it would certainly "FUBAR" our letter of agreement.

However, we would like the National Marine Mammal Stranding Act, not Act, but the federal people involved in those sorts of discussions to consider the possibility of establishing proper protocols and training procedures for rescue divers to effect a disentanglement that could very much be species specific.

We already know that right whales are much or aggressive than gray whales or the humpback whales on the West Coast, and I think we could see a larger number of successful disentanglements at a reduced risk to respondents by implementing the possibility under very narrow, specific circumstances for rescue divers.

MS. WILKIN: All right. Thank you for your comments.

(Whereupon, the public hearing was adjourned)
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at 1:50 p.m.)