

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

26 September 2008

Mr. Douglas Burn
Office of Marine Mammals Management
U.S. Fish and Wildlife Service
1011 East Tudor Road
Anchorage, AK 99503

Dear Mr. Burn:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by the Alaska Department of Transportation and Public Facilities and the Aleutians East Borough under section 101(a)(5)(D) of the Marine Mammal Protection Act. The applicants are seeking authorization to take small numbers of northern sea otters incidental to construction of a new airport, access road, and hovercraft landing area on Akun Island and a hovercraft landing and storage area on Akutan Island, Alaska, and testing and operation of a hovercraft between Akun and Akutan Islands. The Commission also has reviewed the Fish and Wildlife Service's 27 August 2008 *Federal Register* notice announcing receipt of the application and requesting comments on its proposal to issue the authorization, subject to certain conditions.

The principal means of taking would be by disturbance resulting from construction noise, transportation of construction materials, airport and hovercraft testing and operations, and related support activities. The Service's *Federal Register* notice states that no dredging or pile driving would be required. Construction of the airport and transportation of construction materials would commence during the second quarter of 2009 and continue until the fourth quarter of 2010. Hovercraft testing could commence as early as the first quarter of 2009, with sustained operations commencing in the fourth quarter of 2010 after construction is completed.

The Service believes that the proposed activities would result in Level B harassment (i.e., behavioral modifications including temporarily vacating the area around the construction site) of small numbers of northern sea otters that occur in the vicinity of the proposed construction activities. However, the Service believes that the short-term displacement of any hauled-out animals that could occur as a result of the proposed activities is not anticipated to affect the overall fitness of any individual animal and will have no significant impact on the species. The Service also states that it does not anticipate that the proposed project will have an adverse impact on Native subsistence uses or needs. The Service's notice states that mitigation measures would include locating hovercraft landing areas away from intertidal and subtidal areas; developing hovercraft routes and operational procedures to avoid and minimize the likelihood of disturbance; locating hovercraft fueling, maintenance, and fuel storage areas at least 100 feet from Akutan Harbor and Surf Bay; establishing northern sea otter avoidance areas and hovercraft speed and course alteration procedures, power-down procedures, and ramp-up procedures; developing nighttime hovercraft operations; and conducting research to assess the potential effects of hovercraft operations on northern sea otters.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the Fish and Wildlife Service—

- authorize the incidental harassment of sea otters expected to occur during the proposed construction activities and hovercraft testing but defer authorization of taking incidental to operation of the hovercraft until the proposed research has been completed and other planned mitigation measures are in place;
- require, as part of the development of ramp-up and power-down procedures and the testing of the hovercraft, the collection of information to assess the responses of sea otters to these measures; and
- in consultation with the applicant, consider authorizing subsequent incidental taking for five-year intervals through regulations and letters of authorization issued under section 101(a)(5)(A), inasmuch as the proposed activities are expected to be ongoing.

RATIONALE

The Marine Mammal Commission concurs with the Service's preliminary determination that the proposed activities are likely to have no more than a negligible impact on the southwest Alaska stock of northern sea otters, provided that the proposed 100-foot setback for fuel storage is sufficient to ensure that any spills that occur do not reach areas in which sea otters can be contacted. We note, however, that section 101(a)(5)(D) of the Marine Mammal Protection Act—the provision under which authorization is being sought—further requires that the Service prescribe “means of effecting the least practicable impact” on the affected marine mammal species or stock. In this regard, the applicants and the Service identify several measures that they plan to take to minimize the impact on sea otters. These include the preparation of a route operation manual, research to evaluate in detail the effects of hovercraft noise on sea otter behavior and physiology, a study of sea otter movements and diving behavior in the project area, identification of sea otter avoidance areas, and development of ramp-up and power-down procedures. The Commission concurs that these actions are appropriate but notes that they underscore the fact that not enough is currently known about how sea otters will respond to hovercraft operations in the project area to identify the measures necessary to minimize the effects on sea otters. The Marine Mammal Commission therefore recommends that the Service authorize the incidental harassment of sea otters expected to occur during the proposed construction activities and hovercraft testing but defer authorization of taking incidental to operation of the hovercraft until the proposed research has been completed and other planned mitigation measures are in place. The Commission notes that deferring action on the request until these questions are addressed should not place any undue hardship on the applicants because sustained operations are not expected to begin until the final quarter of 2010 and the requested authorization would expire and need to be renewed before that date in any event.

The Commission also notes that, although the proposed ramp-up and power-down of the hovercraft to reduce impacts on sea otters are conceptually sound mitigation measures, there is no

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empirical data to assess their effectiveness. The Marine Mammal Commission therefore recommends that as part of the development of ramp-up and power-down procedures and the testing of the hovercraft, the operators be required to collect information to assess the responses of sea otters to these measures.

Although not entirely clear from the *Federal Register* notice, it appears as though the Service and the applicants are anticipating the issuance of a series of one-year incidental harassment authorizations under section 101(a)(5)(D) of the Marine Mammal Protection Act to authorize the taking of sea otters incidental to the planned operation of the hovercraft in years to come. Because this is expected to be an ongoing activity, it probably makes more sense to authorize incidental taking for five-year intervals through regulations and letters of authorization issued under section 101(a)(5)(A). The Marine Mammal Commission recommends that the Service and the applicants consider using this alternative after the initial one-year authorization currently being sought expires.

Please contact me if you have any questions concerning these recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director