



MARINE MAMMAL COMMISSION

23 May 2018

Ms. Kimberly Klein
U.S. Fish and Wildlife Service
1011 East Tudor Road, MS 341
Anchorage, Alaska 99503

Dear Ms. Klein:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by Hilcorp Alaska, LLC (Hilcorp) under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA). Hilcorp is seeking authorization to take small numbers of sea otters by harassment incidental to aerial surveys for oil and gas exploration in Cook Inlet, Alaska. The Commission also has reviewed the U.S. Fish and Wildlife Service's (FWS) 26 April 2018 notice (83 Fed. Reg. 18330) requesting comments on its proposal to issue the authorization, subject to certain conditions.

Hilcorp proposes to conduct gravitometer and magnetometer surveys using both a fixed-wing aircraft and helicopter as part of its lower Cook Inlet geophysical survey program. During the survey, the helicopter would be flown at a minimum altitude of 91 m (300 ft) over nearshore waters and the fixed-wing aircraft would be flown at a minimum altitude of 152 m (500 ft) over offshore waters. The activities are scheduled to begin at the end of May 2018 and would occur for 14 days within a two-month period.

FWS preliminarily has determined that, at most, the proposed activities would temporarily modify the behavior¹ of small numbers of sea otters. It also anticipates that any impact on the affected species and stocks would be negligible. FWS does not anticipate any take of sea otters by death or serious injury and believes that the potential for disturbance will be at the least practicable level because of the proposed mitigation measures. The proposed mitigation, monitoring, and reporting measures include—

- taking reasonable precautions to avoid harassment of sea otters;
- maintaining a minimum altitude of 305 m (1,000 ft) when approaching and departing the survey area, except where necessary due to weather or restricted visibility for human safety purposes;
- using Hilcorp's aircraft operators to monitor and enumerate Level B harassment takes;
- ceasing activities if the number of takes exceeds authorized limits;

¹ The Commission notes that FWS incorrectly stated that the temporary threshold shift threshold adopted by the U.S. Navy was 159 rather than 154 dB re 1 μ Pa²-sec.

- reporting injured, dead, or distressed sea otters to the FWS using its phased approach² and ceasing activities, if necessary; and
- submitting field and technical reports and a final comprehensive report to the FWS.

The Commission concurs with FWS's preliminary finding and recommends that FWS issue the requested incidental harassment authorization, subject to inclusion of the proposed mitigation, monitoring, and reporting measures.

Availability of marine mammals for subsistence

Hilcorp indicated that it would avoid working in areas where sea otters are known to be hunted for subsistence purposes. It also planned to discuss the proposed activities with subsistence stakeholders in the Cook Inlet region to identify and resolve concerns regarding the project's effects on subsistence hunting of sea otters. If any unresolved or ongoing concerns remained, Hilcorp would develop a Plan of Cooperation (POC) to address those concerns.

Hilcorp has since indicated to FWS that it has met with Alaska Native Village members in Anchorage, Anchor Point, Halibut Cove, Homer, Kenai, Nanwalek, Ninilchik, Port Graham, Seldovia, Soldotna, and Tyonek. No conflicts with subsistence hunting of sea otters have been identified, but outreach and coordination are ongoing and will presumably include other Alaska Native villages identified in Hilcorp's Stakeholder Engagement Plan³. That plan incorporates the requirements of a POC and also summarizes the strategy for engagement with other (non-Native) stakeholders in the area. Based on the timing and location of both Hilcorp's proposed activities and subsistence hunting activities, Hilcorp's consultation with Alaska Native villages, and the proposed mitigation measures, FWS has preliminarily determined that the proposed taking would not have an unmitigable adverse impact on the availability of sea otters for subsistence use by Alaska Natives.

Adequate opportunity to consider public comments

The opportunity for public comment provided under section 101(a)(5)(D)(iii) of the MMPA should be a meaningful one that allows FWS sufficient time to not only solicit public comments, but also to analyze, assess, and respond to all comments received and revise, as appropriate, its proposed authorization and rationale in light of those comments. In this instance, the public comment period closes on 29 May 2018, six days after Hilcorp's activities were scheduled to begin. Since Hilcorp's activities are scheduled to begin before the comment period closes, the Commission is concerned that FWS would not have sufficient time to review the Commission's and the public's comments or to revise the proposed authorization accordingly. FWS has since indicated that the IHA would not be issued until after the close of the public comment period and all comments received are fully considered. The Commission recommends that, in the future, FWS take all steps necessary to ensure that it publishes and finalizes proposed incidental harassment authorizations far enough in advance

² The Commission informally noted that injured and distressed sea otters should be reported to FWS immediately rather than waiting up to 48 hours. FWS clarified that it plans to require that injured and distressed otters be reported as soon as possible and within 48 hours. It acknowledged that communications in Alaska can be difficult, and that reporting requirements need to take into account human safety concerns.

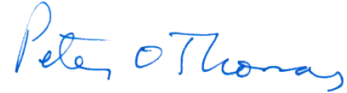
³ Including the Native Villages of Port Graham and Salamatof.

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of the planned start date of the proposed activities to ensure full consideration is given to any and all comments received.

Please contact me if you have questions regarding the Commission's recommendation.

Sincerely,



Peter O. Thomas, Ph.D.,
Executive Director