



MARINE MAMMAL COMMISSION

17 May 2019

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Re: Permit Application No. 22298
(Alaska Department of Fish and Game)

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the above-referenced permit application with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (the MMPA). The Alaska Department of Fish and Game (ADFG) is requesting authorization to conduct research on Steller sea lions during a five-year period—permit 18537 authorized similar activities. The purpose of the research is to investigate Steller sea lion (1) health (2) nutritional status, (3) foraging behavior, (4) movement patterns, (5) reproductive parameters, and (6) life history characteristics. ADFG would harass, observe, handle, restrain, photograph/videotape, measure/weigh, mark, sample, instrument, and/or conduct other procedures¹ on numerous individual Steller sea lions of either sex and any age class each year (see the take table for specifics). It would use various measures to minimize impacts on the sea lions and also would be required to abide by the National Marine Fisheries Service's (NMFS) standard permit conditions. ADFG's Institutional Animal Care and Use Committee has reviewed and approved the proposed research protocols.

Remote sedation

ADFG requested to sedate juvenile and adult sea lions using remotely-deployed darts. ADFG stated that, under its previous permit, it darted 12 animals, only seven of which were successfully captured, handled, and released. Additionally, ADFG was not able to confirm the survival of one of the animals that was darted but not captured, which was accompanied by a likely dependent pup. Thus, it is clear that the technique of remote sedation continues to have inherent risks. The Commission believes that NMFS should continue to take a precautionary approach, as it has with authorizing remote sedation under previous permits involving Steller sea lions. Therefore, the Commission recommends that NMFS (1) condition the permit to require ADFG to monitor pinnipeds that have been remotely sedated and report on (a) their behavioral response and any activities that place them at heightened risk of injury or death, (b) whether they entered the water and their fate could not be determined, and (c) whether the dependent pups of those remotely

¹ Including bioelectrical impedance and ultrasound.

sedated pinnipeds were abandoned, injured, or killed² and (2) encourage ADFG to evaluate whether the pups' behavior in response to remote sedation of the females is noticeably different from their response to other capture methods, when feasible. The Commission further recommends that NMFS condition the permit to require ADFG to halt the use of remote sedation and consult with NMFS and the Commission if three or more pinnipeds are remotely sedated and suffer unanticipated adverse effects, including entering the water and either drowning or disappearing so that their fate cannot be determined.

Takes per animal

ADFG stated in its application that individual Steller sea lions could be overflowed or approached multiple times each year during aerial, ground, and vessel surveys, primarily for the purpose of obtaining resight data. Although those individuals could be potentially harassed multiple times per year, ADFG's take tables did not reflect that possibility. In its informal review of the application provided to the Commission, the Commission indicated that ADFG should increase the number of takes per animal³ based on the number of times an individual could be taken during those activities in the various take tables. That approach is consistent with the original version of ADFG's application that was submitted to NMFS, ADFG's previous permit, and NMFS's 2016 application instructions. However, ADFG did not revise the numbers of takes per animal and justified that decision by indicating that it is not able to predict how many times a marked animal may be taken during dedicated resight surveys. NMFS concurred with this approach. The Commission finds ADFG's justification illogical since one of the main purposes of the surveys is to resight marked or branded individuals. Thus, the intent is in fact to document the number of times a known animal is observed and where it is observed. By concurring with this approach, NMFS is allowing for an inaccurate portrayal of the number of times an individual could be taken⁴ that deviates from the approach followed in ADFG's original application, its previous permit, and other recent permit applications, including another application related to Steller sea lion research⁵ that was published in conjunction with ADFG's permit (84 Fed. Reg. 15597).

The 'takes per animal' column is intended to describe the number of times an individual could be taken by the procedures specified in a given year, and applicants generally base the 'takes per animal' on the maximum number of times that an animal could be taken (i.e., number of surveys that would be conducted). In ASLC's permit application, 12 takes per Steller sea lion were included during ground and vessel approaches to the Chiswell Island rookery, indicating that ASLC expects 12 site visits to the rookery and thus each individual sea lion could potentially be taken up to 12 times per year. That same approach was used for numerous permits involving pinnipeds⁶, as well as cetaceans⁷. Since ADFG clearly stated in its application that it expects to conduct multiple aerial surveys at a single rookery or haul-out site throughout the field season and had requested 15

² Either by other pinnipeds or by the researchers.

³ Only 1 take per animal was requested.

⁴ And is inconsistent with the information necessary for a section 7 consultation under the Endangered Species Act (ESA). Under the ESA, the number of times an individual is approached or taken in a given day is required for consultation purposes, let alone the number of times an individual is taken during an entire year of activities.

⁵ Alaska SeaLife Center (ASLC) permit application 22293.

⁶ See, for example, permits issued to MML (16087 and 18528), Alaska Department of Fish and Game (ADFG; 20466, 20443, and 18537), Dr. Linnea Pearson (21006), Dr. Robert Garrott (21158), Southwest Fisheries Science Center (20599).

⁷ See, for example, permits issued to MML (20465), Tamara McGuire (18016).

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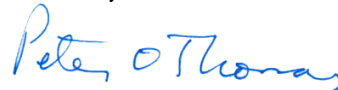
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incidental takes per animal for aerial surveys in an earlier version of its application, the 'takes per animal' are much greater than one and should be indicated as such. In addition, it appears that NMFS's approach to the 'takes per animal' issue may be based on the concern that permittees are unable to report the number of takes per animal in NMFS's application and reporting system (Authorizations and Permits for Protected Species (APPS)). If that is indeed the limiting factor, then APPS should be amended to enable collection of that information, when available.

The Commission has commented, and provided recommendations, for many years on the manner in which NMFS populates take tables for Level B harassment, but apparently inconsistencies in approach persist across applications. Therefore, the Commission recommends that NMFS (1) base the 'takes per animal' in ADFG's permit and all other permits on the estimated number of times an individual could be taken in a given year during aerial, ground, and vessel surveys for ADFG's application and, more generally, by the various methods of taking or procedures for other applications and (2) amend the reporting fields in APPS to enable permittees to provide that information, when available.

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

Sincerely,



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