



MARINE MAMMAL COMMISSION

13 May 2020

Dr. Mary Cogliano, Chief
Branch of Permits, MS: IA
Division of Management Authority
U.S. Fish and Wildlife Service
5275 Leesburg Pike
Falls Church, Virginia 22041-3803

Re: Permit Application No. 73634A
(Alaska SeaLife Center)

Dear Dr. Cogliano:

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).

Alaska SeaLife Center (ASLC) has requested a change in the authority under which non-releasable, rehabilitated northern sea otters are maintained by the facility—the previous permit authorized similar activities. Sea otters that are maintained at the facility under section 109(h) of the MMPA would be transferred to a public display permit under section 104(c). ASLC is seeking authority to hold an unlimited number of northern sea otters of either sex and of any age class for public display purposes. ASLC also requested authority to import samples for diagnostic purposes from live or dead sea otters that previously had been exported by the facility. ASLC (1) is open to the public on a regularly scheduled basis, with access that is not limited or restricted other than by charging admission, (2) offers an educational program based on professionally recognized standards, and (3) holds an exhibitor's license¹ issued by the Animal and Plant Health Inspection Service under the Animal Welfare Act.

Inappropriate authorization for the various activities

Under its previous 73634A permit, ASLC requested² and the Fish and Wildlife Service (FWS) changed the authority under which northern sea otters are maintained at the facility, but only for otters originating from the southcentral or southeastern Alaska populations. Sea otters from the

¹ Exhibitor's License 96-C-0024 has been issued to ASLC.

² See items 2 and 5 in its previous application.

threatened southwestern Alaska population were not covered by the previous permit³. However, ASLC did not specify in its current permit application which population(s) of northern sea otters would be covered by the permit. ASLC also did not request authority to export non-depleted northern sea otters (or samples) in its current permit application⁴. Under its previous permit⁵, ASLC requested and was authorized to export non-depleted northern sea otters. Based on the inconsistencies between the previous permit application and the issued permit and the current application, it is unclear what the requested permit would be authorizing.

The Commission also notes several issues with the Letter of Authorization (LOA) 73418B issued to ASLC in March 2020 authorizing the facility to rescue and maintain sea otters under section 109(h) of the MMPA. Item 15(i) of the LOA authorizes ASLC to export live, rescued northern sea otters that have been deemed non-releasable by FWS. The LOA did not specify to which population(s) of northern sea otters item 15(i) would apply, but, as explained in footnote 3, sea otters from the depleted stock cannot be exported for purposes of public display. Moreover, section 109(h) of the MMPA does not provide authority for exporting marine mammals, it only authorizes taking, and, in limited situations, importing marine mammals to render medical treatment. In addition, section 102(a)(4) of the MMPA specifically prohibits the export of a marine mammal unless authorized under subsection 104(c). Once a public display permit is issued, section 104(c)(2)(B)(ii) of the MMPA authorizes subsequent transfer and export of those marine mammals to a facility that meets the permit-issuance criteria. However, authority to export a marine mammal from a depleted stock would still be precluded. Simply stated, marine mammals cannot be exported under the authority of section 109(h) of the MMPA. Such exports are allowed only after the marine mammals are transferred to and maintained under a public display permit under 104(c), which can only be issued for non-depleted stocks. As such, FWS cannot authorize ASLC to export northern sea otters held under the authority of section 109(h) under LOA 73418B. Similarly, FWS should not be using section 109(h) or an LOA issued thereunder to authorize ASLC to import samples from previously rescued and exported sea otters⁶ for any purpose, including husbandry-related diagnostic analyses. The importation, and any subsequent export, of samples originating from exported sea otters should be authorized under the permit, not the LOA.

To simplify the process and avoid overlapping, and perhaps duplicative or inconsistent provisions under separate authorizations, FWS should incorporate the activities currently authorized under LOA 73418B with the activities requested under this permit application—the joint permit and LOA then would subsume LOA 73418B. This approach is consistent with the manner in which FWS intends to authorize ASLC to conduct rescue, rehabilitation, public display, and other related activities on walruses⁷. The Commission thus recommends that FWS issue a joint permit and LOA

³ Under section 101(a)(3)(B) of the MMPA, a public display permit cannot be issued for a depleted species or stock. All marine mammals listed as threatened or endangered under the Endangered Species Act are considered depleted under the MMPA.

⁴ See item 12 in its current application.

⁵ See items 24 to 28 in its previous application.

⁶ See item 16 of LOA 73418B.

⁷ In its application for permit 11219B, ASLC initially had requested to transfer walruses maintained under section 109(h) to a public display permit under 104(c) of the MMPA. It also requested to import samples from live and dead walruses to provide diagnostic assistance to foreign facilities. FWS has indicated that it plans to issue ASLC a joint permit and

to replace LOA 73418B that (1) authorizes ASLC to (a) conduct its rescue and rehabilitation activities under 109(h) and public display activities under 104(c) for northern sea otters, (b) change the authority under which non-releasable, rehabilitated otters are maintained for purposes of public display from section 109(h) to section 104(c), and (c) import and export/re-export samples for husbandry and medical treatment purposes, (2) specifies that the permit, and any subsequent export of sea otters, is limited to non-depleted northern sea otters from the southeastern and southcentral Alaska populations, and (3) retains the 109(h) status and prohibits the export of depleted northern sea otters from the southwestern Alaska population. If FWS does not follow the Commission's recommendation to issue a joint permit and LOA, the Commission recommends that FWS (1) authorize ASLC under permit 73634A to (a) change the status from 109(h) to 104(c) of non-releasable northern sea otters only from the southeastern and southcentral Alaska populations⁸ and (b) import and re-export husbandry-related samples from exported otters and (2) remove the authorization of these activities from LOA 73418B.

The Commission believes that the proposed activities are consistent with the purposes and policies of the MMPA. Kindly contact me if you have any questions concerning the Commission's recommendations.

Sincerely,



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

LOA for all associated activities that will subsume the previous authorization under LOA 73418B for activities involving walruses.

⁸ This would allow subsequent exports of these otters to foreign facilities in accordance with the requirements of section 104(c)(2)(B) of the MMPA.