



MARINE MAMMAL COMMISSION

29 March 2010

Mr. P. Michael Payne, Chief
Permits, Conservation, and Education Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the application submitted by the National Marine Fisheries Service's Alaska Region under section 101(a)(5)(D) of the Marine Mammal Protection Act. The agency is seeking authorization to take small numbers of northern fur seals incidental to replacing and repairing the fur seal research observation towers and walkways on St. Paul Island, Alaska. The principal means of taking would be by disturbance resulting from construction activity (e.g., hand carpentry possibly supplemented with use of small gasoline generators and pneumatic tools) and human presence. The Commission also has reviewed the National Marine Fisheries Service's 10 March 2010 *Federal Register* notice (75 Fed. Reg. 11123) announcing the receipt of the application and requesting comments on its proposal to issue the authorization, subject to certain conditions.

The Service has preliminarily determined that, due to the infrequency, short duration, and localized nature of the proposed activities, only a small number of marine mammals, relative to the population size, would be taken by harassment, and that the possibility of Level A harassment involving the injury or death of seals is extremely remote. The Service believes that take by Level B harassment will be reduced to the lowest level practicable through incorporation of the proposed monitoring and mitigation measures (e.g., daily monitoring by biologists from the Alaska Region and limiting the construction season to minimize the likelihood of encountering breeding and nursing northern fur seals). The Service has further preliminarily determined that the anticipated takes will have a negligible impact on the affected stock of marine mammals and that the proposed project is not expected to result in an unmitigable adverse impact on subsistence use of the species.

RECOMMENDATION

Based on the information provided, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested authorization, provided that—

- the monitoring and mitigation activities proposed in the Service's *Federal Register* notice are included in the authorization and are carried out as described; and
- field crews clear all construction-related debris from each site upon completion of construction activity and use bolts or other materials, rather than nails, during construction so that structures that become decrepit in the future do not become hazardous to animals (e.g., boards with nails sticking out).

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RATIONALE

The *Federal Register* notice states that the proposed activities would be completed by 7 June 2010 (prior to the breeding and pupping period) or earlier if it appears that the incidental taking of seals would exceed that authorized in the incidental harassment authorization. The notice also states that field personnel would approach sites cautiously by choosing a route that minimizes the potential for disturbance of the animals and would vacate the site as soon as possible after completing construction. Further, the notice states that the applicant would conduct a monitoring program to assess the level of taking or impact on populations of marine mammals that are expected to be present; develop a before-after/control-impact study design (Underwood 1994) in the final monitoring plan; and immediately suspend activities if any animal is injured or killed as a result of the activities. The Marine Mammal Commission recommends that the authorization, if issued, include these measures. The Marine Mammal Commission further recommends that the National Marine Fisheries Service take additional steps to reduce the potential for injury to animals by requiring that (1) field crews clear all construction-related debris (including debris from towers or walkways that have fallen down) from each site upon completion of construction, and (2) crews use bolts or other materials, rather than nails, during construction so that structures that become decrepit in the future do not become hazardous to animals (e.g., boards with nails sticking out).

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Literature Cited

Underwood, A. J. 1994. On beyond BACI: Sampling designs that might reasonably detect environmental disturbances. *Ecological Applications* 4(1):3015.