



**The Otter Project**

www.otterproject.org

March 15, 2007

P. Michael Payne, Chief  
Permits, Conservation and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Re: Taking of Marine Incidental to Specified Activities; Taking Marine Mammals Incidental to Power Plant Operations in Central California in reference to Federal Register, February 20, 2008, Volume 73, Number 34, FR Doc E8-3146; p. 9299-9302

Dear Mr. Payne,

I am writing to comment on several pending applications for incidental take permits under the Marine Mammal Protection Act (MMPA), pursuant to section 101(a)(5)(A). All comments made are on behalf of The Otter Project, a nonprofit environmental advocacy group that exists to promote the rapid recovery of the California sea otter, a threatened species under the Endangered Species Act (ESA). We are concerned with the impact that the authorization of incidental take will have on sea otters, other marine mammals, and their habitats.

We are specifically addressing the requests made by companies operating power plants in the range of California's Southern sea otter. These include The Moss Landing Power Plant, owned by LS Power Equity Partners, The Morro Bay Power Plant, owned by Dynegy, The Diablo Canyon Power Plant, owned by PG&E, The Reliant Energy Ormand Beach Generating Station, owned by Reliant Energy, and The Reliant Energy Mandalay Generating Station, also owned by Reliant Energy. All companies are applying for exemption permits to allow for small, incidental take of marine mammals. The risk of incidental take is a result of the use of once-through cooling (OTC) systems in all facilities. It should be noted that the established sea otter range does not extend as far as Oxnard, where the Ormond Beach and Mandalay facilities operate; however

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individual sea otters have been sighted in the area. Based on observation, we are predicting an expansion of the sea otter back into its historical range, and are therefore concerned with the potential threats in the region.

The Otter Project opposes the granting of incidental take permits to the power plants that lie in the range of the California sea otter on three principal concerns.

First, we are concerned about the risk of impingement of sea otters. None of the permit applications mention a threat to sea otters; this does not mean, however, that such a threat does not exist. We are concerned with the implications of granting a permit to the plants to legally impinge marine mammals such as sea lions, elephant seals, and harbor seals. If the OTC system equipment can impinge an elephant seal, it can certainly impinge a sea otter. Although the protection of the sea otter officially falls under the jurisdiction of the U.S. Fish and Wildlife Services, it is the NMFS' responsibility to consider the impact of their actions on all marine mammals. The taking of marine mammals at the aforementioned power plants has so far been minimal; however OTC can have a harmful impact. For example, the Scattergood Generating Station in Los Angeles has killed 55 sea lions throughout its years of operation. It is our position that an incidental take permit is not warranted for the aforementioned power plants; it may even encourage negligible practices.

Our second basis for concern is the entrainment of larvae, fish eggs and other microscopic organisms. OTC systems have many negative consequences on marine eco-systems; one of the principal concerns is the threat to fish and invertebrate populations that entrainment of larvae poses. Sea otters and all marine mammals cannot thrive without a steady food supply, and the perpetuation and proliferation of OTC systems is a threat to the health of marine ecosystems, and consequently their food supplies.

While the choice to grant or not grant an incidental take permit does not directly intensify or mitigate this concern, it does have implications for the tolerance of OTC systems throughout California. This brings us to our third principal concern—the encouragement of environmentally unsound technology along the California coast. Various public and nonprofit organizations have recently come forward to denounce the use of OTC systems in coastal power plants, recognizing that it is an old and environmentally unsustainable technology. In April of 2006 the multi-agency Ocean Protection Council adopted a resolution to work to minimize the impacts of OTC systems, with the broader implications of phasing out this technology. Furthermore, The State Water Board is in the process of complying to Section 316 (b) of the Clean Water Act, which requires that the best available technology be used in coastal power plants. The general consensus is that OTC is not the best available technology, and it is likely that we will be seeing a move away from OTC in the near future. Rather than reinforce the use of this environmentally unsound system, it is our

hope that the NMFS will choose to deny the requested permits. Although this decision would not directly cause power plants to change technology use, it would be incentive for them to look forward in considering the effects of their technological choices on the ecosystems within which they operate.

I trust that your agency will take these concerns into consideration as you decide whether or not to grant the requested permits. Although the implications of this decision may seem "incidental", the decision made could have ramifications for future environmental considerations along the California coast. It is our hope that your decision promotes sound environmental practices for all--humans and sea otters--involved.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in cursive script, appearing to read "Allison Ford". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

Allison Ford  
Program Associate