Fugro may lose permit over whale strike

By FRANK HARTZELL Staff Writer -

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The owner of the ship that struck and killed a blue whale off Fort Bragg on Oct. 19 faces revocation of its permit by the California State Lands Commission at its meeting this week.

"Fugro Pelagos, Inc. has violated provisions of its Offshore Geophysical Survey Permit by conducting geophysical surveys without a National Oceanic and Atmospheric Administration (NOAA) approved Marine Wildlife Monitor onboard," stated a SLC staff report.

"Further, Fugro Pelagos, Inc. was also in violation of (its) permit by conducting a geophysical survey in State waters without prior notification to (SLC)," the staff report stated.

State Lands staff is recommending that the commission today, Thursday, Dec. 17, immediately revoke Fugro’s permit to conduct such surveys in California waters and authorize enforcement to ensure compliance.

Fugro, an international ocean exploration corporation, is the owner of the 176-foot Pacific Star.

In an interview immediately following the incident, a company spokesman said there was an observer on board. Later, they said no NOAA observer was on board. Since then the company has consistently argued that the permit did not apply to the work under way at the time.

"We feel it's important to reiterate that the permit at issue here pertains specifically to geophysical surveys," said David Millar, president of Fugro Pelagos, in an interview following issuance of the staff report.

The State Lands staff report not only refutes that contention, but recommends that the permit be restored only if the company agrees the permit does apply to such work.

Fugro, which has an opportunity to publicly argue against the revocation today, did not wish to publicly react to the recommendation that their permit be yanked.

"We feel we're not in the position to publicly discuss it at this time," said Millar.

"Our focus right now is to fully cooperate with state and federal authorities, including the State Lands Commission, in their important investigations in order to do what we can to ensure that the Oct. 19 incident — which has never occurred in our more than 30-year history — never happens again," Millar added.

The issue was brought to the forefront by Steve Sullivan, partner in a family-owned rival ocean surveying company. Before the incident, Sullivan had publicly stated that lax enforcement and widespread permit violations, including by state vessels, would lead to marine mammal deaths. To protect marine mammals in a busy ocean, more regulation is needed and real penalties should loom, he said.

Sullivan said his company uses ships with propellers protected by cages to prevent whale
injuries. He also argues that the Pacific Star's size (which has been widely misreported in the media) created a separate threat to marine mammals.

Fugro refutes that claim. Propeller guards would be too costly and would create new hazards such as rope entanglement, the company said.

There is no mention on the State Lands Commission agenda of changing the rules for others who may also be operating in gray areas of the permit process. But renewals are on the agenda for two surveyors, California State University Monterey Bay (who Sullivan claims has also not been following the rules), and Sea Engineering, Inc.

In the staff report, the kind of work needing permits clearly includes what the Pacific Star was doing.

"These low energy surveys utilize equipment such as side scan sonar and magnetometer, which use no more than two kilojoules of energy," the report states. "Air guns and other sources of high energy are expressly prohibited in the permit."

The staff recommends revocation of Fugro's general permit to conduct low energy geophysical surveys and also recommends authorization of staff to bill for expenses related to the incident response.

To get the permit back after Jan. 17, under the proposed terms, Fugro must agree in writing that ocean floor surface mapping using multibeam sonar is an activity covered by the permit. The company must also have a marine wildlife observer on deck during surveys in the future, under the proposed terms. A separate investigation is under way by NOAA's National Marine Fisheries Service Office of Enforcement.

Members of the State Lands Commission include the lieutenant governor, the state controller and the state director of finance. The first two are statewide elected officials while the last is a cabinet level officer appointed by the governor.

About 200 staff members work for the executive director, according to its website.

The commission's primary tasks include clarifying boundaries and providing stewardship for state lands, such as the 3-mile wide band of submerged continental shelf real estate off the California Coast.

Today's meeting in San Diego also includes a report on the effects of sea level rise on state lands, and SLC projects and planning.