

**MARINE MAMMAL COMMISSION**  
**4340 EAST-WEST HIGHWAY, ROOM 905**  
**BETHESDA, MD 20814**

31 December 2003

Ms. Laurie K. Allen  
Director, Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Ms. Allen:

One issue that arose during the discussion of the Marine Mammal Protection Act permit program at the Commission's recent annual meeting was the need to review and revise the National Marine Fisheries Service's application instructions for scientific research and enhancement permits. A common cause of delays in processing permits is the failure of the applicant to provide all of the necessary information or to provide it in a way that facilitates review within the framework of the statutory issuance criteria. For example, the primary criterion for the issuance of a scientific research permit under the Act is whether the applicant has demonstrated that the proposed taking is required to further a bona fide scientific purpose. Yet, although the instructions specify that the applicant provide some of the information needed to make such a determination (e.g., the qualifications and experience of the investigators, a description of the proposed research activities and the expected levels and types of taking, a justification of the proposed sample sizes, etc.), nowhere is the applicant asked to discuss these issues within the context of the ultimate finding to be made. Further, although the instructions direct the applicant to the pertinent statutory and regulatory provisions, it would be useful if the application itself were to describe the issuance criteria and were restructured to relate the information being sought to the findings the Service must make. That is, the applicant should be asked not only to describe what they intend to do, but also to provide an explanation of how that research furthers a bona fide scientific purpose.

Similarly, when endangered and threatened marine mammals are involved, the instructions should specify that the applicant needs to address the additional issuance criteria set forth in the Service's permit regulations (e.g., 50 C.F.R. §§ 216.41(b)(5) and 222.308(c)) and in the Endangered Species Act. For example, applicants should be asked explicitly to explain how the proposed research contributes to (1) fulfilling a research objective identified in a species recovery plan or stock assessment, (2) understanding the basic biology or ecology of the species or identifying, evaluating, or resolving relevant conservation

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problems, or (3) fulfilling a critically important research need. (Currently, the application instructions only ask for some of this information.)

The most serious shortcomings with the application instructions pertain to enhancement permits, which are covered only if one interprets the term “research” to include enhancement activities. Nowhere is the applicant asked to describe the proposed “enhancement” activities or to address the statutory criteria for issuing such permits. What is needed are user-friendly application instructions that clearly explain when such a permit is needed (as opposed to an authorization under section 109(h)) and that directly address the statutory requirements. Among other things, applicants should be asked to describe:

- the proposed enhancement project (and indicate whether authorization is being sought under the Marine Mammal Protection Act, the Endangered Species Act, or both);
- how the proposed activities are likely to contribute to maintaining or increasing the distribution or abundance of the species in the wild;
- whether there is an applicable conservation or recovery plan and how the proposed activities relate to the elements of such a plan;
- whether captive maintenance is proposed and, if so, why it is necessary and how it is expected to contribute to the survival and recovery of the species in the wild;
- their plans for returning marine mammals maintained in captivity for enhancement purposes and their progeny to the wild and the criteria to be used to determine when returns are feasible; and
- whether marine mammals maintained in captivity for enhancement purposes will be placed on public display and, if so, the justification for doing so.

The Commission looks forward to working with you and your staff to develop a clear set of permit application instructions that will be easier for applicants to use and that are geared toward obtaining the necessary information in a way that facilitates review of proposed activities against the applicable statutory and regulatory issuance criteria. Please let me know how the Commission can best help the Service in this effort.

Sincerely,



David Cottingham  
Executive Director

cc: Mr. Charlie R. Chandler  
Mr. Stephen L. Leathery