



MARINE MAMMAL COMMISSION

28 December 2016

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Re: Permit Application No. 20527
(Ann Pabst, Ph.D.,
University of North Carolina Wilmington)

Dear Ms. Harrison:

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). Dr. Pabst is seeking to renew her permit to conduct research on cetaceans during a five-year period—permit 16473 authorized the same activities.

Dr. Pabst proposes to conduct research year-round on cetaceans in the western North Atlantic Ocean. The purpose of the research is to (1) document the presence of North Atlantic right whales and humpback whales in the mid-Atlantic region, including signs of human interaction and (2) investigate the distribution and abundance of cetaceans within areas that are used or will be used by the U.S. Navy for military activities and by industry for offshore energy production. Researchers would harass, observe, and photograph¹ numerous cetacean species of either sex and any age class (see the take table) during aerial and vessel-based surveys.

Researchers would cease their activities if animals exhibit changes in their swimming behavior (e.g., direction and swim speed, breach, etc.) and/or diving behavior (e.g., time spent at the surface). Vessels would approach animals from the side and would not separate females from their calves. All encounters would be limited to 30 minutes. Researchers would collaborate with personnel at the National Marine Fisheries Service's (NMFS) regional offices, New England Aquarium, and Florida Fish and Wildlife Conservation Commission.

In Dr. Pabst's original application, she indicated in the take table that individuals from each species could be taken up to 12 times annually based on individuals being observed, and thus potentially harassed, multiple times per year during aerial and vessel-based surveys. However, NMFS instructed Dr. Pabst to (1) change the 'takes per individual' column of the take table from 12 to 1 and (2) note in the 'details' column that aerial surveys will be flown 3-12 times per year, and that some animals may be seen in each survey. The frequency of vessel-based surveys was not mentioned, even though the application indicated that more than 150 surveys would be conducted

¹ Including conducting photogrammetry measurements.

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per year. NMFS's approach regarding the issue of multiple takes per animal presents an inaccurate portrayal of the potential numbers of takes that could occur and deviates from the approach followed in other recent permit applications².

The 'takes per animal' column is intended to describe the number of times an individual could be taken by the procedures specified. For Dr. Randall Wells' permit (#20455), he included 10 takes per animal during aerial and vessel-based surveys and indicated that 10 was based on the estimated average number of sightings per year. Since Dr. Pabst conducts photo-identification studies as well, she likely has such information. However, when past sightings data do not exist, applicants generally base the 'takes per animal' on the maximum number of times that an animal could be approached (i.e., number of surveys that would be conducted). That approach was used recently for Dr. Tamara McGuire's permit amendment (#18016) and Southwest Fisheries Science Center's permit (#20599). It also is the approach the U.S. Fish and Wildlife Service employs in its permits. Using either of these approaches, the 'takes per animal' are much greater than one and the total authorized take per year could easily be exceeded if one assumes that an animal would be taken only once³. In addition, it appears that NMFS's proposed approach to the 'takes per animal' issue may be based on the concern that permittees are unable report the number of takes per animal in the NMFS's application and reporting system (Authorizations and Permits for Protected Species (APPS)). If that is the case, then APPS should be amended to collect that information, when available.

The Commission has commented, and provided recommendations, for many years on the manner in which NMFS populates take tables for Level B harassment. The Commission thought that this issue had been resolved, but apparently inconsistencies across applications persist. Therefore, the Commission recommends that NMFS (1) base the 'takes per animal' in Dr. Pabst's permit and all other permits on the estimated number of times an individual could be taken in a given year during aerial and vessel-based surveys for Dr. Pabst's application and by the various methods of taking or procedures for other applications and (2) amend the reporting fields in APPS appropriately to enable permittees to provide that information, when available. The Commission is happy to discuss this matter with NMFS in the near-term so that it can be resolved in a timely manner.

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 recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

² And with NMFS's application instructions that were provided to the public for comment and should be finalized shortly.

³ For example, 300 humpback whales taken once equates to 300 takes rather than 300 humpback whales taken up to 12 times each, which equates to 3,600 takes.