



MARINE MAMMAL COMMISSION

24 July 2017

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. 21018
(Brent Stewart, Ph.D.,
Hubbs SeaWorld Research Institute)

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 amendment request with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (the MMPA). Dr. Stewart proposes to conduct research on pinnipeds in California during a five-year period—permit 16553 authorized the same activities and expires on 31 October 2017¹.

Dr. Stewart proposes to conduct research on harbor seals, northern elephant seals, and California sea lions year-round throughout southern California, including the Channel Islands and mainland California. The objectives are to investigate (1) abundance, (2) survival and reproductive success, (3) demography, (4) community ecology, (5) foraging patterns, (6) habitat use, (7) disease/health, and (8) phenology of the three pinniped species. Dr. Stewart would harass, capture, handle, restrain, administer drugs to, measure, weigh, mark/tag, sample², and attach instruments to individuals of the three species (see the take tables in the application). He also would conduct aerial and ground-based surveys.

Application requirements

The Commission notes that Dr. Stewart's application appears not to be substantively different from the version that the Commission reviewed in 2011 despite changes in the applicable application instructions and requirements. Permit applicants have been directed to update application renewal requests to include new objectives, new or additional references, revised take numbers, additional information specific to the various activities³, etc. Specifically, the National Marine Fisheries Service (NMFS), through its application instructions⁴, requires each applicant to

¹ Which includes a one-year extension.

² Including blood, blubber, hair, skin, swabs, urine, feces, and spew.

³ The required information regarding each specific method or procedure has been augmented as well.

⁴ From both 2014 and 2017.

describe how the proposed activities are different from, build upon, or duplicate past research activities and, if the researcher has conducted the same activities previously, show how the previous objectives were met. That information has not been provided and pertinent references have not been updated beyond 2011.

Dr. Stewart provided an updated CV for himself, but the CVs for his two co-investigators have not been updated since 2011 in one case and 2014 in the other. None of the CVs specify the qualifications that each individual possesses to conduct the proposed activities. NMFS's application instructions issued in 2014 required that a CV, resume, or list of qualifications be submitted with the application to ensure that individuals are qualified to conduct or directly supervise activities conducted under the permit. Because CVs generally do not provide such detailed information, NMFS began requiring in its 2017 application instructions that principal investigators and co-investigators (PI and CIs, respectively) provide specific information concerning their qualifications in their CVs or resumes. NMFS specified that, if sufficient information concerning the researchers' experience is not provided, additional information would be otherwise required. Further, NMFS indicated that personnel would not be authorized to conduct the proposed activities unless and until sufficient experience is demonstrated. The necessary information has not been provided for Dr. Stewart or his CIs.

In addition, NMFS recently amended its guidance regarding what constitutes a take by Level B harassment for pinnipeds on land. NMFS considers pinnipeds that move more than twice the animal's body length⁵ in response to the source of disturbance to constitute a take. That guidance is set forth in the 2017 application instructions and was provided to Dr. Stewart. Dr. Stewart declined to amend his take estimates to reflect the updated NMFS policy, but rather applied a different standard in his application. He postulated that animals that respond briefly by alerting and raising their heads and realigning without moving more than a meter be considered taken. Dr. Stewart's application should follow the agency's guidance rather than a standard which he has prescribed. As such, the Commission recommends that, before the requested permit is issued, either NMFS or the applicant recalculate the estimated numbers of takes applying the applicable agency interpretation of Level B harassment for pinnipeds. If the estimated numbers change appreciably, NMFS should publish the revised information and provide additional opportunity for public comment.

The Commission also notes that Dr. Stewart provided the same Institutional Animal Care and Use Committee (IACUC) approval from 2010⁶ that he provided when his permit was renewed in 2011. When NMFS requested that Dr. Stewart also provide the IACUC research protocols, consistent with NMFS's application instructions from both 2014 and 2017, Dr. Stewart refused to do so. It is unclear why, absent all information required under its permit application and associated instructions, NMFS considered the application to be complete or why it published a notice in the *Federal Register* seeking comment on that application. The Commission believes that all applicants should be held to the same standard and that consideration of an application by the Commission and the public should not proceed until all of the required information has been provided. Therefore, the Commission recommends that NMFS suspend further consideration of Dr. Stewart's research permit application until such time that he abides by all of the requirements of the 2017 application instructions, including updating his application, providing the specified information

⁵ Or if already moving a change of direction of greater than 90 degrees.

⁶ Which expired 31 July 2013.

regarding his qualifications and those of his CIs, providing estimates of the anticipated numbers of takes by Level B harassment that are consistent with NMFS's policies and guidance, submitting his current IACUC protocols and approval, and any other additional information specific to the various proposed activities. To the extent that there are material omissions, further consideration of the application should not proceed until the Commission and the public have been provided with the relevant documentation and given an opportunity to review and comment on the application in light of the updated information.

Mortalities

Dr. Stewart is requesting authorization for up to four unintentional mortalities⁷ per year for each of the three pinniped species. NMFS informed the Commission that Dr. Stewart has never reported any mortalities under his previous permits authorizing similar activities and that it asked him to reduce the requested mortalities to one mortality per year for each of the three species. The Commission understands that Dr. Stewart again declined to amend his request. The Commission agrees with NMFS that authorizing up to four mortalities per year per species is unnecessarily high based both on the types of activities for which a permit is being sought and on the applicant's history operating under similar permits in previous years. Two mortalities per year for each species would cover the possibility that a lactating female dies and her pup had to be euthanized, because it could not be taken to a rehabilitation facility. If NMFS decides to issue the requested permit, the Commission recommends that NMFS authorize no more than two mortalities per year for each of the three pinniped species and condition the permit to authorize Dr. Stewart to euthanize any animal that is seriously injured and determined unlikely to survive. Further, the Commission understands that the permit, if issued, would include the standard condition regarding euthanasia of dependent pups⁸.

The Commission would appreciate a call from NMFS prior to issuing this permit to discuss NMFS's response to these recommendations. Please contact me if you have any questions regarding the Commission's recommendations.

Sincerely,



Rebecca J. Lent, Ph.D.,
Executive Director

⁷ It is unclear if these include intentional mortalities via euthanasia for humaneness purposes, which has been standard in all live-capture permits for many years.

⁸ If a lactating female dies as a result of the permitted activities and her dependent pup can be identified, the principal investigator/CI and any veterinarian present would evaluate the pup's age, health, and ability to survive on its own. If the pup is determined to not likely to survive, the researchers must immediately contact the NMFS Stranding Network Coordinator and proceed as directed, which could include taking the pup to a rehabilitation facility or euthanizing it.