



MARINE MAMMAL COMMISSION

15 November 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 Amendment Application No. 21158
(Robert Garrott, Ph.D., Montana State University)

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 application with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (the MMPA). Dr. Garrott is seeking to amend his permit to conduct research on Weddell seals in Antarctica—permit 21158 expires on 30 September 2022. The purpose of the research is to evaluate how temporal variation in the marine environment affects individual life histories and population dynamics of Weddell seals. Researchers are authorized to harass, observe, handle/restrain, weigh, conduct photogrammetry on, sample, mark, and/or attach small instruments to numerous Weddell seals of both sexes and various age classes.

Dr. Garrott has requested to increase the number of pups that can be flipper tagged from 675 to 800 per year. Dr. Garrott and his team observed an abnormally high number of pups during the current field season. He indicated that the currently authorized take limits are not adequate to meet his goal of tagging all pups in the Erebus Bay colonies each year. The Commission understands that NMFS plans to issue a permit amendment under the MMPA's "emergency" permit provision (section 104(c)(3)(A)). That provision allows scientific research permits to be issued before the end of the normally required 30-day public comment period if delaying issuance could result in injury to a marine mammal species, stock, or individual or in the loss of unique research opportunities. Although justification has yet to be provided, the Commission understands that NMFS plans to issue the permit amendment before the public comment period closes based on a determination that a unique research opportunity otherwise would be lost. The Commission has yet to see NMFS's full rationale for invoking the emergency provision in this instance. However, given the unanticipated, unusually high pup production this year and the researcher's inability to flipper tag seals beyond early December, the Commission expects that NMFS will be able to provide a credible explanation for not following normal issuance procedures for the 2017 field season.

Public notice and procedures

Based on correspondence from NMFS, it was apparent before NMFS published notice of the amendment request in the *Federal Register* that it was planning to use the emergency permit provision. Yet, the notice was silent concerning NMFS's intentions. Although the Commission was apprised of NMFS's intention to use emergency procedures, the public was not, and therefore members of the public would be unaware that comments should be submitted early in the comment period to have any influence on the permit amendment. Thus, the Commission recommends that, in the future, NMFS (1) indicate in its initial notice of a permit application or amendment when it is considering using emergency issuance procedures and, whenever possible, provide the rationale for invoking those procedures and (2) provide a thorough rationale for its use of emergency procedures in the notice of issuance¹. The Commission further recommends that NMFS make a concerted effort to provide public notice² as quickly as possible, using both its website and the *Federal Register*, when it plans to issue or has issued emergency permits under the MMPA.

The Commission also has concerns regarding the scope of the permit amendment that NMFS plans to issue under the emergency permit provision. Rather than issuing the amendment under that provision for the 2017 field season only, the Commission understands that NMFS plans to issue the amendment for the remaining four years of activities³ as well. The Commission notes that it is only the research opportunity during the 2017 field season that would be lost if the permit is not amended under the emergency issuance provision. And, only those activities should be authorized prior to the close of the 30-day comment period. When invoking the emergency provision for the proposed amendment and for any other permits in future years, the Commission recommends that NMFS (1) authorize only those activities that could result in the loss of a unique research opportunity *or* could result in injury to a marine mammal species, stock, or individual under the emergency provision and, (2) after the close of the 30-day comment period and consistent with normal issuance procedures, consider all comments received regarding the proposed activities in subsequent years and authorize those activities at that time.

Sufficiency of take requests

Dr. Garrott in his amendment application based the proposed increase from 675 to 800 takes of Weddell seal pups on his projection⁴ that 795 pups would be born during the 2017 field season. Given that pup production this year apparently increased by approximately 20 percent over historic levels, the Commission questions whether the proposed take limit of 800 pups is sufficient to cover planned research activities should the population exhibit even a small amount of additional increase in pup production or variability within that projection. The Commission also notes that the numbers of takes authorized for the various activities under Dr. Garrott's current permit are less

¹ Section 104(d)(5) of the MMPA specifies that notice of issuance or denial of a permit is to be published in the *Federal Register* within 10 days of the agency's decision, which should be fulfilled when issuing the permit amendment under the emergency provisions.

² Including contacting the appropriate Alaska Native marine mammal co-management organizations if the proposed activities would occur in Alaska.

³ Depending on the comments received at the close of the comment period, NMFS may consider yet another permit amendment.

⁴ As of 31 October.

Ms. Jolie Harrison
15 November 2017
Page 3

than the numbers that were authorized under his previous permit 17236⁵. In reviewing the numbers of takes reported for those activities under permit 17236, Dr. Garrott could reach or exceed the taking limits under his current permit if he experiences comparable levels of taking in subsequent years. For example, Dr. Garrott reported to have taken 305 adult Weddell seals⁶ during various capture activities in 2015. He currently is authorized to take only 300 adults when conducting the same types of activities.

Most researchers account for some measure of variability in their numbers of requested takes. In this instance, Dr. Garrott based the numbers of takes requested in his current permit, which are insufficient for flipper tagging all pups during the ongoing 2017 field season, on historic trends. The Commission is concerned that the numbers of takes authorized under Dr. Garrott's permit may be insufficient for other activities too and in future years as well. To dissuade NMFS from invoking the emergency provision again for Dr. Garrott's permit, the Commission recommends that NMFS require Dr. Garrott to review the numbers of takes for his currently authorized activities, considering both the numbers of animals reported to have been taken in previous years and the variability inherent in a population that is growing, and revise the numbers of takes for the various age classes and various activities accordingly.

Kindly contact me if you have any questions concerning the Commission's recommendations.

Sincerely,



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

⁵ He was authorized to take 700 pups during capture activities.

⁶ He was authorized to take 425 adult seals.