



# MARINE MAMMAL COMMISSION

2 July 2018

Ms. Mary Cogliano, Chief  
Branch of Permits, MS: IA  
Division of Management Authority  
U.S. Fish and Wildlife Service  
5275 Leesburg Pike  
Falls Church, Virginia 22041-3803

Re: Permit Application No. 100361  
(Mote Marine Laboratory and Aquarium)

Dear Ms. Cogliano:

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). Mote Marine Laboratory and Aquarium (Mote) is requesting authorization to conduct research on manatees during a five-year period—similar activities were authorized under its previous permit.

Mote proposes to conduct research on manatees in Florida year-round. The purpose of the research is to investigate manatee (1) abundance and distribution, (2) life history parameters and survival, (3) disease and health, (4) genetics, (5) habitat use, (6) sensory and cognitive abilities, and/or (7) physiology and thermal biology. Researchers would harass, observe, photograph/videotape, sample, and conduct captive studies on numerous manatees each year (see the take table for specifics). Researchers would use various measures to minimize impacts on manatees and also would be required to abide by the Fish and Wildlife Service's (FWS) standard permit conditions. Mote's Institutional Animal Care and Use Committee (IACUC) appears to have approved the various research protocols<sup>1</sup>.

## General issues

Mote originally submitted its application to FWS in 2016, which was provided to the Commission for review in December 2016. At that time, the Commission noted deficiencies in the information contained in the application and provided specific questions that needed to be addressed before the application should be considered complete. FWS provided the Commission a revised application for review in October 2017 and, in November 2017, published notice of the application's availability for public review and comment in the *Federal Register* (82 Fed. Reg. 51857). The Commission reviewed the revised application, noted that questions identical or similar to those

---

<sup>1</sup> The protocols were not provided so as to confirm that all proposed activities have been reviewed and approved by Mote's IACUC.

initially raised with respect to the original application remained unanswered, and requested additional information to resolve those questions.

In June 2018, FWS finally provided the Commission with answers to some, but not all, of the questions. The Commission notes that it is very difficult to ascertain exactly which activities are considered part of Mote's 'final' application, as multiple versions of the application and take tables and numerous email exchanges were provided to the Commission as part of the more than 200-page 'complete' application. Outstanding issues that still need to be resolved include—

- incorrectly specifying that collection of skin scrapings and conducting captive studies (including studies of sensory biology and physiology involving the administration of ingestible temperature transmitters) constitute Level B<sup>2</sup> rather than Level A harassment;
- incorrectly specifying in the take table that blood collection would be conducted under this permit<sup>3</sup>;
- failing to specify in the take table<sup>4</sup> that skin scrapings would be collected only from non-newborn calves or older;
- clarifying what portions of a manatee would remain unwrapped during sensory tests involving body wraps<sup>5</sup>;
- specifying whether and when infrared thermography and exhaled breath temperature measurements would be conducted on captive, wild, or captive and wild manatees and how those methods would differ depending on whether animals would be in a captive or wild environment;
- failing to stipulate how harassment of female-calf pairs would be minimized during vessel-based photo-id;
- failing to include CVs/biosketches or proof of FAA certification for Mr. Yeager and Mr. Cross, who would serve as unmanned aerial system (UAS) pilots;
- failing to provide sufficient information in Dr. Bauer's CV<sup>6</sup> to demonstrate the necessary expertise/experience to support authorizing him to conduct various activities; and
- failing to describe whether UAS duties listed for the various co-investigators<sup>7</sup> will include monitoring the animals for observed changes in behavior or serving as a spotter rather than actually piloting the UASs.

Although the Commission initially raised these issues almost a year and a half ago, in some cases FWS chose not to seek additional information from Mote to address them. In other cases, our

---

<sup>2</sup> Although Mote specified that these activities constituted Level B harassment, it is FWS's responsibility to advise applicants accordingly and correct fundamental errors before publishing applications for review.

<sup>3</sup> The application text indicated that blood sampling would occur under permits held by U.S. Geological Survey and Florida Fish and Wildlife Conservation Commission, not under Mote's permit. If this is not the case, the application and take table should be amended. If collecting blood samples is included, the applications and take table should indicate that this is considered Level A rather than Level B harassment.

<sup>4</sup> Take tables are to include relevant age classes.

<sup>5</sup> The Commission finds it difficult to provide further comments on this activity given the scant or altogether lacking information provided in the application and other documentation provided to the Commission.

<sup>6</sup> As noted in informal comments to FWS, Ms. Scolardi or Ms. Barton's CVs should serve as an example for Dr. Bauer's CV. Dr. Bauer likely has the necessary experience but that cannot be determined based on the information provided.

<sup>7</sup> None of the CVs provided for the CIs include UAS piloting experience.

questions were forwarded to Mote, but not addressed. More generally, the Commission notes that the information provided by Mote to explain how its proposed research activities meet the *bona fide* scientific research requirement under section 104(c)(3)(A) of the MMPA and in support of an enhancement permit under the Endangered Species Act is scant.

Given that (1) this application has been in process for nearly two years, (2) the failure of the applicant to provide some of the missing information is due to FWS's decision not to forward all of the Commission's questions for responses, (3) some of the delay in processing this application appears to have been caused by FWS's failure to forward Mote's responses to the Commission for several months<sup>8</sup>, and (4) much of the delay seems to have been no fault of Mote, the Commission believes that it would be appropriate for FWS to move this process along. Nevertheless, given the numerous remaining deficiencies in the application, the Commission believes that any permit issued needs to be conditioned to address information gaps and uncertainties. Therefore, if FWS decides to issue a permit based on the information in hand, the Commission recommends that the final permit (1) specify that collecting skin scrapings and conducting captive studies involving sensory biology and physiology constitute Level A harassment and amend the final take table accordingly, (2) not include blood collection as an authorized activity and remove this activity from the final take table, (3) specify that skin scrapings can only be collected from non-newborn calves or older animals and prohibit collection from newborn manatees, (4) require that any authorized body wrap not inhibit movement or breathing of the animal, (5) specify whether infrared thermography and exhaled breath temperature measurements would be conducted on captive or wild manatees, or both, and be conditioned to require Mote to provide a description of the relevant methods for captive and/or wild animals (as appropriate) for review by FWS prior to allowing these activities to proceed, (6) prohibit Mote from separating females from calves during vessel-based photo-id activities, (7) be conditioned to prohibit Mr. Yeager and Mr. Cross from operating UASs until they have provided FWS with documentation indicating that they have the necessary FAA certification and experience in flying the UASs, (8) require Dr. Bauer to provide either a CV or biosketch demonstrating relevant experience to conduct any authorized captive studies and prohibit his participation in any such studies until FWS has reviewed such information and determined that he has sufficient experience and expertise, and (9) specify that Ms. Barton, Ms. Scolardi, and Ms. Johnson are authorized to serve as manatee observers or spotters, but not as UAS pilots.

### **The Commission's role**

The Commission and its Committee of Scientific Advisors spend considerable time and effort reviewing permit applications and take their review responsibilities under sections 101(a)(1), 202(a)(2) and 203(c) of the MMPA seriously. The Commission expects FWS to take our role in permit application reviews equally seriously. The Commission poses questions or seeks additional information during its reviews because either (1) the applicant has not provided all of the information required under FWS's application instructions or (2) the information provided is not sufficiently complete or clear to support the findings required under the MMPA and FWS's implementing regulations or to recommend appropriate permit conditions for inclusion in furtherance of MMPA section 104(b)(2). As such, the Commission expects FWS to be responsive to our requests for clarifications and additional information, provide applicants with the Commission's

---

<sup>8</sup> It appears that Mote provided responses to questions and updated documentation but FWS did not provide those to the Commission for 8 months in one instance and 5 months in another.

questions and comments, and seek the requested information in a timely manner – all before further action is taken on the application.

FWS's application instructions were updated in 2017 in an effort to help ensure that applicants, from the outset, provide all of the information necessary for FWS, the Commission, and the public to review an application in light of all applicable statutory and regulatory requirements. Many of the problems associated with this and other recent applications, and the need for the Commission to seek additional information, could be avoided if FWS did a better job of vetting applications to ensure that they contain all of the required information before sending them to the Commission or making them available for public review. It is FWS's responsibility to ensure that applicants abide by those instructions and provide the necessary information. Therefore, the Commission reiterates the recommendation made in its [18 December 2017 letter](#) to FWS that, prior to publication, FWS staff review applications in light of the applicable instructions to ensure that all required information is present, is consistent with FWS policies, makes sense, and is in a format that facilitates review by the Commission and the public. The Commission does not intend to recommend issuance of any permit in the future when it believes the application is inadequate, even if some of the information gaps could be addressed through imposition of permit conditions. Rather, the Commission intends to recommend that FWS return any deficient application and require the applicant to provide all necessary information before processing the application further.

### **Timing of the Commission's comments**

When FWS provided the 'final' version of the application to the Commission on 19 June 2018, it requested that the Commission provide its comments and recommendations within 10 calendar days. Although the Commission is expediting its review to the extent possible, it notes that under applicable regulations (50 C.F.R. § 18.31(b)) the Commission has 45 days from receipt of an application to respond.

### **Import of animals and samples**

FWS's notice of this application (82 Fed. Reg. 51857) indicated that Mote also requested to import four species of manatees and dugongs for purposes of scientific research. The Commission informally noted at that time that Mote's revised application did not include such a proposal or even a proposal just to import samples from Florida manatees. FWS indicated that it had, on its own initiative, included import as an element of the application so it would not have to amend its notice in the event that Mote applied for a permit amendment<sup>9</sup> to authorize imports of these animals or such samples. The Commission responded that the purpose of the *Federal Register* notice is to provide the public with an opportunity to comment on the activities proposed by the applicant. Since Mote's revised application did not propose to import animals or samples, it should not have been included in the notice. If Mote later seeks an amendment of its permit to authorize imports, that would be the appropriate time to publish notice of the request and to solicit public comments.

The Commission understands that efforts are being made across federal agencies to streamline their activities and reviews. Nevertheless, the agencies also must abide by the

---

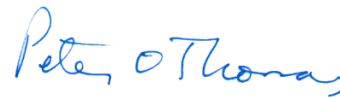
<sup>9</sup> Mote originally included import in its application from 2016 but removed all such requests in its 2017 and 2018 documentation.

Ms. Mary Cogliano  
2 July 2018  
Page 5

requirements of the applicable laws. In this case, section 104(d)(2) of the MMPA is clear that notices should track the application and that comments are to address the “taking or importation *proposed in such application (emphasis added)*.” That is, FWS should not speculatively include in notices, or solicit comments on, activities that have not been included in applications.

The Commission believes that the activities for which it has recommended issuance of a permit, if subject to the recommended permit conditions, are consistent with the purposes and policies of the MMPA. Kindly contact me if you have any questions concerning the Commission’s recommendations.

Sincerely,



Peter O. Thomas, Ph.D.,  
Executive Director