



# MARINE MAMMAL COMMISSION

3 July 2018

Mary Cogliano, Ph.D.  
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. 791721  
(U.S. Geological Survey)

Dear Dr. 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). U.S. Geological Survey (USGS) is seeking to renew its permit to conduct research on manatees in the southeastern United States and Puerto Rico during a five-year period—USGS's previous permit authorized similar activities.

USGS proposes to conduct research on manatees in the southeastern United States and Puerto Rico year-round. Researchers would harass, observe/track, photograph/videotape, capture, collect morphometrics, mark, sample, and/or instrument numerous manatees of both sexes and various age classes (see the take table for specifics). USGS requests up to one manatee mortality per year. Researchers would use various measures to minimize impacts on manatees and also would be required to abide by the U.S. Fish and Wildlife Service's (FWS) standard permit conditions. USGS's Institutional Animal Care and Use Committee has reviewed and approved the research protocols.

## General issues

USGS originally submitted its application to FWS in 2017, which was provided to the Commission for review in May 2017. At that time, the Commission noted deficiencies in the information contained in the application and provided specific questions that needed to be addressed. FWS provided the Commission a revised application for review in November 2017. The Commission reviewed the revised application, noted that the majority of the issues raised with respect to the original application remained, and requested additional information to resolve those and other questions on the revised application. FWS published the application for public comment in March 2018 in the *Federal Register* (83 Fed. Reg. 9748).

In June 2018, FWS finally provided the Commission with answers to a few, but not all, of the questions. The Commission notes that the final application is still far from sufficient, as USGS

did not provide the basic information as required in FWS's 2017 application instructions. *Some* of the issues include failing to—

- specify the purpose of the research;
- explain how its proposed research activities meet the *bona fide* scientific research requirement under section 104(c)(3)(A) of the MMPA and fulfill an enhancement permit under section 10(a)(1)(A) of the Endangered Species Act (ESA);
- specify which manatee species are the subject of the permit and for which activities;
- specify what the non-harmful and non-invasive behavioral and physiological studies are for both captive and wild manatees, including what methods would be employed, what samples would be taken, and what the source<sup>1</sup> of the animals would be;
- specify which of the proposed activities would be conducted on captive animals and under which authorization those activities would occur;
- specify the type and number of samples to be collected from dead animals;
- specify the type and source<sup>2</sup>, including potential countries of origin, of samples to be imported;
- justify why a female and calf less than 2 m in length need to be captured and why it is necessary to sample (including biological sampling, tail notching, and needle biopsy), freeze brand, and PIT tag the calf—if these activities are retained, justify why they need to be conducted on neonates;
- justify why collection of two tail notch samples and four needle biopsy samples per animal is necessary;
- specify the method by which free-ranging manatees are sampled via a needle biopsy;
- specify the methods by which each sample would be collected from live-capture animals, including whether it proposes to collect teeth from live animals;
- clarify whether it would like to be able to euthanize an animal for humaneness purposes, if severely injured during capture activities;
- specify the type, dosage, and purpose (e.g., emergency, prophylactic, etc.) of each drug that could be used;
- specify the mass and dimensions of the TDR;
- specify the minimum approach distance for (1) vessels during tracking activities and (2) snorkelers and/or divers when deployed from a vessel and during observations;
- specify the measures that would be used to minimize the possibility of accidental drowning of manatees in capture nets;
- specify under what circumstances the welfare of the target animal would not be considered during live-capture activities;
- clarify under which authorization animals that are injured as a result of live-capture activities would be retained for rehabilitation;
- specify the maximum time that would be spent with an individual manatee during UAS operations;

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<sup>1</sup> Captive animals include both temporarily (i.e., those undergoing rehabilitation) and permanently captive. This should be specified.

<sup>2</sup> Dead or live animals and captive or free-ranging animals.

- provide details on how impacts during vessel surveys and capture activities in general would be minimized;
- provide sufficient information in the principal investigator's (PI) and co-investigator's (CI) CVs<sup>3</sup> to demonstrate the necessary expertise/experience to support authorizing them to conduct various activities and specify exactly which activities stipulated in the take table each PI or CI would conduct; and
- stipulate whether UAS duties include monitoring the animals for observed changes in behavior or serving as a spotter rather than actually piloting the UASs—provide FAA certification for the pilots.

Although the Commission initially raised these issues more than a year ago, in some cases FWS chose not to seek additional information from USGS to address them. In other cases, the Commission's questions<sup>4</sup> were forwarded to USGS, but not sufficiently addressed. Given all of these shortcomings with the application and the difficulty it represents to the Commission and other reviewers to ascertain what activities are being proposed, how they would be conducted, and why, the Commission recommends that FWS return the application to USGS to address these deficiencies. Upon submission of a new or revised application that satisfies the requirements of FWS's permit application instructions, section 104(c)(3) of the MMPA, section 10(a)(1)(A) of the ESA, and the implementing regulations of these provisions, FWS should republish the application in the *Federal Register* with a new opportunity for public comment and review. If FWS decides to process the application in its present state, the Commission recommends that the application be denied as not meeting the applicable requirements.

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

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 more thorough 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,

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<sup>3</sup> Many of the PI/CIs likely have the necessary experience but that cannot be determined based on the information provided.

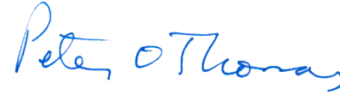
<sup>4</sup> Some of FWS's questions were not sufficiently addressed either.

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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 and if not, return the application to the applicant for revision.

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

Sincerely,



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