



MARINE MAMMAL COMMISSION

9 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. 82088B
(Marine Mammals Management)

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). Marine Mammals Management (MMM) is seeking to renew its permit to conduct research on polar bears in Alaska during a five-year period—MMM's previous permit authorized similar activities.

MMM proposes to conduct research on polar bears in Alaska year-round. The purpose of the research is to investigate (1) population structure and life history parameters, (2) distribution and abundance, and (3) movement patterns and habitat use of polar bears. Researchers would harass, observe/track, photograph/videotape, capture, sample¹, and/or instrument numerous polar bears of both sexes and various age classes (see the take table for specifics). MMM requests up to three polar bear mortalities² per year, not to exceed six during the five-year period. Researchers would use various measures to minimize impacts on polar bears and also would be required to abide by the U.S. Fish and Wildlife Service's (FWS) standard permit conditions. MMM's Institutional Animal Care and Use Committee has reviewed and approved the research protocols.

General issues

MMM submitted an application to FWS in 2015, and an updated version of the application was provided to the Commission for review in May 2017. At that time, both FWS and the Commission noted deficiencies in the information contained in the application and provided specific questions that needed to be addressed. FWS provided the Commission with a revised application for review in November 2017. The Commission reviewed the revised application, noted that most of the issues raised concerning the original application remained unanswered, and requested additional information to resolve those and other questions on the revised application. One of the major additional points that the Commission noted was that MMM removed the text from various sections

¹ Samples could be imported and/or exported for analysis as well.

² Either unintentional or intentional mortality (i.e., euthanasia for humaneness purposes).

of the application and inserted the text in the take table or referenced a 2014 study plan in lieu of providing the information. At that time, the Commission noted that the intent of FWS's application instructions is for the applicant to provide answers to various sections within the application text and for the take table³ to support that information. Further, neither the Commission nor the public should have to dig through a study plan to obtain answers to the application questions or to try to decipher what the applicant plans to do.

In June 2018, FWS indicated that it had sent the application to the *Federal Register* to be published and provided the Commission with answers to some, but not all, of its questions. MMM's 'final' application included three applications and three take tables⁴ plus numerous clarifying email exchanges, a 'final' application totaling more than 500 pages. The Commission notes it is difficult to ascertain exactly which activities are to be considered part of the 'final' application, and it doesn't appear that the application and take tables had been revised since August 2017.

With respect to providing a take table and study plan in lieu of a complete application, FWS responded that it recently updated its application instructions but that it is not requiring that applicants include specific information in specific places within the application. Rather FWS makes its decisions on completeness of the application based on the information provided being available and clear. The 500-page 'final' application is neither transparent nor complete. As such, the Commission recommends that FWS require all applicants to (1) follow its application instructions, (2) ensure that all of the relevant information is provided and described accordingly in the text of the application, and (3) ensure that take tables⁵ and study plans are used to support the information provided within the application, not in lieu of that information. The Commission further recommends that the final application made available for the Commission's formal comment and public comment include *only* the final revised application text⁶ and take tables and any other necessary documentation (i.e., IACUC protocols and approvals, CVs/biosketches, etc.)—all clarifying information obtained via subsequent email exchanges should be incorporated in the final revised application text and take table.

Aside from the format of the application, the outstanding issues still to be resolved include—

- specifying what mitigation measures (i.e., increase altitude, increase lateral distance) would be implemented if a polar bear reacts adversely (i.e., a bear runs away or runs towards the water, a female becomes separated from her cubs, etc.) to the aircraft during survey⁷ activities;
- specifying what mitigation measures would be implemented to ensure that females and cubs recover from sedation and reunite after captures;
- providing in the 'final' application the method of collection for snow (water) samples, whether bears would be in the vicinity during the collection and subsequently harassed, what

³ Take tables are referenced as being an appropriate format in only 2 of the 38 sections of FWS's 2017 application instructions. Forty-eight sections were included in FWS's 2014 application instructions as used by MMM, with only 2 of the 48 sections referencing inclusion of information in a take table format.

⁴ All three of which had the same title and header date, which made it even more difficult to determine the most recent version.

⁵ It also must ensure that the information provided in the text matches the information in the take table.

⁶ Information relative to the 38 sections.

⁷ Not capture or darting activities.

- analyses would be conducted on those samples, and if they are being exported for analyses, where they are being sent; and
- providing sufficient information in the principal investigator's (PI) and co-investigator's (CI⁸) CVs⁹ to demonstrate the necessary expertise/experience to support authorizing them to conduct various activities and specifying which activities the PI and CIs would be authorized to conduct.

Although the Commission initially raised these issues more than a year ago, in most cases FWS chose not to seek additional information from MMM to address them. Given that (1) this application was submitted more than two years ago¹⁰, (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, or to do so without the appropriate context, for responses, (3) some of the delay in processing this application appears to have been caused by FWS's failure to forward MMM's responses to the Commission, and (4) much of the delay seems to have been no fault of MMM, the Commission believes that it would be appropriate for FWS to move this process along. Nevertheless, given the remaining deficiencies in the application, the Commission believes that any permit issued needs to be conditioned to address significant information gaps and uncertainties.

Therefore, if FWS decides to issue a permit based on the information in hand, the Commission recommends that FWS (1) condition the permit to require MMM to increase altitude and/or lateral distance if any bear adversely reacts (i.e., a bear runs away, a bear runs toward the water, a female becomes separated from her cubs, a bear cowers to the ground, etc.) to the presence of the aircraft during survey activities, (2) condition the permit to require MMM to take measures to ensure that the cubs¹¹ remain in close proximity to the female as she recovers from sedation, to ensure the cubs do not wander near open water or leads, and to prevent other bears from approaching the animals during that time, (3) specify (a) how snow would be collected, what analyses would be conducted, and where, and (b) whether polar bears in the vicinity may be harassed and if so, specify ways to minimize harassment or advise MMM to request Level B harassment takes accordingly, and (4) require the PI and CIs to provide either a CV or biosketch demonstrating relevant experience to conduct *all* activities to be authorized, specify which activity each PI or CI would be authorized to conduct¹², and prohibit their participation in any such activities until FWS has reviewed such information and determined that they have sufficient experience and expertise. The Commission further notes that indicating a PI or CI has 'participated in polar bear research' or 'led polar bear research activities' is not sufficient, as not all personnel conduct all activities. The PI and CIs need to indicate the specific experience that they have remotely darting animals for sedation, administering sedation drugs, attaching collars, collecting blubber biopsies and removing teeth, remotely biopsy sampling animals, conducting aerial surveys, etc. They should clarify whether those

⁸ The Commission notes that both PI and CIs are authorized to conduct the specified activities without supervision. Thus, personnel should not be designated as a CI unless they have the relevant experience and can conduct the various activities without being supervised by the PI or other CIs.

⁹ Some of the PI/CIs likely have the necessary experience but that cannot be determined based on the information provided. Others clearly do not have the necessary experience, as MMM noted that they would not be conducting the activities unsupervised. In which case, those personnel should not be listed as CIs authorized to conduct those activities.

¹⁰ FWS's original review of the application did not occur for approximately 7 months.

¹¹ The permit also must specify if cubs are to be taken into captivity and under what circumstances if the female dies.

¹² See the Sea to Shore #37808a permit application as an example.

activities have been conducted on polar bears¹³ and include either the length of time they have been conducting the activities¹⁴ or the number of times those activities have been conducted¹⁵. In the future, if a PI/CI's experience or CV is insufficient and/or inconsistent with the duties specified to be conducted in the PI/CI table, FWS should return all documentation to the applicant to be revised prior to processing the application further.

Reporting requirements

The Commission noted that the information provided by MMM in its annual reports is scant, making it difficult to determine whether it is abiding by the constraints of the permit. It is unclear which procedures are being conducted on the various age classes (i.e., blubber biopsies, tooth collection, attaching collars, ear tags or other tags or multiple tags), whether some activities are being conducted at all (e.g., remote biopsy sampling, den monitoring, carcass collection, import of samples), and the number of animals incidentally harassed. The reports imply that all procedures are being or have been conducted on all captured bears, which isn't necessarily the case. In other instances, the information for the various activities is lacking altogether. As such, the Commission recommends that FWS condition the permit to require that MMM report on the number/age class/sex of bears taken, type of activities conducted (including incidental disturbance), and specifics associated with the taking (e.g., whether all samples are taken from all captured bears, which bears were tagged and with how many tags) including if activities (e.g., remote biopsy sampling, den monitoring, carcass collection, import of samples) did not occur. The information reported as part of the annual report should be similar to the information contained within the take table¹⁶.

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 complete or sufficiently 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). In addition, FWS has misinterpreted numerous questions and comments the Commission has provided and has not sent the questions or comments to the applicant in the relevant context. This leads to the applicant not answering the questions sufficiently, because the questions have been taken out of context. This is inefficient for the applicant, FWS, and the Commission. 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

¹³ As opposed to grizzly bears or walrus.

¹⁴ Administering drugs for sedation for the last 10 years is much different than administering drugs for the last month.

¹⁵ Remotely biopsy sampling 100 polar bears is much different than biopsy sampling 2 bears.

¹⁶ See some of the manatee annual reports as examples.

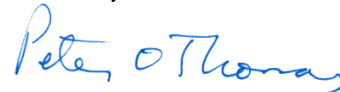
Dr. Mary Cogliano
9 July 2018
Page 5

comments in the context provided¹⁷, 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.

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

¹⁷ The Commission inserts its questions and comments directly into the application to minimize any confusion and to facilitate better understanding of what the question or comment is related to. The application with the Commission's embedded questions and comments should be forwarded to the applicant.