



# MARINE MAMMAL COMMISSION

19 December 2018

Dr. 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. 75595C  
(ABR, Inc.–Environmental & Research Services)

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). ABR, Inc.–Environmental & Research Services (ABR) proposes to conduct research on northern sea otters in Alaska during a five-year period—permit 187053 authorized similar activities.

ABR proposes to conduct research year-round on sea otters in lower Cook Inlet, primarily in Kamishack Bay. The purpose of the research is to investigate abundance and distribution of sea otters in the vicinity of the proposed Pebble Mine. Researchers would harass and observe sea otters of any age class and either sex (see the take table and application for specifics). ABR would use various measures to minimize impacts on sea otters and also would be required to abide by the Fish and Wildlife Service's (FWS) standard permit conditions.

## General issues

In its application, ABR proposed to conduct both aerial and vessel surveys of northern sea otters. In one section of the application, ABR stated that fixed-wing aircraft and helicopters would remain 800 m from animals at haul-out sites. However, in another section, it stated that the aircraft would approach animals no closer than 400 m<sup>1</sup>. Similar inconsistencies are apparent for vessel surveys. ABR indicated it would remain at least 100 m from shore in one section of the application but indicated only 400 m from haulout sites in another<sup>1</sup>. The Commission had noted these inconsistencies to FWS during the initial review process and requested that ABR amend the distances accordingly. However, FWS failed to send these comments to ABR, so no changes were made. Prior to issuing any research permit, the Commission recommends that FWS request that ABR clarify the minimum approach distances for both aerial and vessel surveys and revise the application accordingly.

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<sup>1</sup> Item 18 and 20b, respectively, in the application.

## **Principal investigator (PI) and co-investigator (CI) qualifications**

The original resumes that FWS provided the Commission for review included scant details regarding the PI's and each CI's experience specific to marine mammals and the duties that each individual would be authorized to conduct. The majority of the PI's/CIs' specified experience involved conducting surveys for seabirds and terrestrial mammals. Based on the Commission's informal comments, ABR provided updated qualification forms<sup>2</sup> for the PI and each CI, and asked to remove some CIs from its original request<sup>3</sup>. While the PI/CI qualification forms are much improved from the original resumes submitted, one CI lacks dedicated experience conducting marine mammal surveys. Ms. Attanas primarily served as a seabird biologist during a few cruises in the Chukchi Sea from 2009–2011. She stated that her role was “assisting marine mammal observers during vessel-based transect surveys of marine mammals” and denoted that her experience level was a 2<sup>4</sup>. Ms. Attanas subsequently removed herself as a CI under ABR's complementary permit application submitted to the National Marine Fisheries Service<sup>5</sup>. Therefore, the Commission recommends that FWS remove Ms. Attanas as a CI under the permit until such time that she obtains the relevant experience conducting surveys of sea otters from aircraft and vessels.

## **Application completeness and accuracy**

As stated in previous Commission letters<sup>6</sup>, the Commission poses questions or seeks additional information during its reviews when either (1) the applicant has not provided all of the information required under FWS's 2017 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 requests for clarifications and additional information, provide applicants with the Commission's questions and comments, and seek the requested information in a timely manner.

Since the application underpins the research permit, it is imperative that the application contain accurate, complete, and consistent information. Condition 11.A., included in each FWS research permit, requires that “all activities authorized herein must be carried out in accord [sic] with and for the purposes described in the application”. When a permit is issued on the basis of an application that contains inaccurate information, the permit holder risks unintentionally violating their permit. When an application contains inconsistent information, a permit holder could be in technical violation of their permit because of the lack of clarity regarding which information the agency thought it had approved by way of the permit. Moreover, applications that contain inaccurate and inconsistent information make it difficult, and sometimes impossible, for the Commission and

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<sup>2</sup> Qualification forms that originated from the National Marine Fisheries Service's (NMFS) permitting process.

<sup>3</sup> Thus, some of the CIs listed in the application are no longer accurate and should be removed before the permit is issued.

<sup>4</sup> Level 2 experience equates to performing the procedure while under the supervision or training of an expert (e.g., PI, CI, or veterinarian)

<sup>5</sup> Permit 21856.

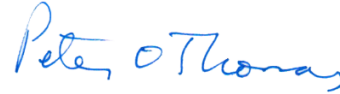
<sup>6</sup> See its [18 December 2018 letter for USGS](#) and [18 December 2018 letter for Dr. Karyn Rode](#).

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public to provide meaningful comments. The Commission therefore recommends that, when an applicant responds to questions sent by FWS<sup>7</sup>, FWS request that the applicant provide both written responses/clarifications to address each of the questions posed, as well as a revised application that incorporates the responses/clarifications.

The Commission believes that the proposed activities 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

cc: Diane Bowen, FWS  
Adrian Gall, ABR  
Lauren Attanas, ABR

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<sup>7</sup> Including the Commission's informal comments as well.