



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. MA009526
(Marine Mammal Health and
Stranding Response Program)

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). The National Marine Fisheries Service (NMFS) Office of Protected Resource's (OPR) Marine Mammal Health and Stranding Response Program (MMHSRP) is requesting to renew its permit to (1) incidentally harass manatees, sea otters, walruses, and polar bears and (2) collect¹, receive, possess, transfer, import, export, analyze, and archive samples from marine mammals under U.S. Fish and Wildlife Service (FWS) jurisdiction during a five-year period². MMHSRP is a statutorily mandated program with three Congressionally directed goals of (1) facilitating the collection and dissemination of reference data on the health and health trends of marine mammals in the wild, (2) correlating the health of marine mammals with available data on physical, chemical, and biological environmental parameters, and (3) coordinating effective responses to unusual mortality events.

General issues

Based on its informal review of MMHSRP's application, the Commission notes numerous deficiencies and inconsistencies. First and foremost, MMHSRP did not use FWS's 2017 application instructions when it drafted its application³. Secondly, FWS apparently has not made MMHSRP aware that it did not follow the current application instructions⁴ or request that it resubmit a revised application based on those instructions⁵. Further, the deficiencies and inconsistencies make it

¹ From dead animals.

² Its previous permit authorized similar activities.

³ Which was submitted in January 2018.

⁴ The 2014 application instructions were similar to those of 2017, except they included less clearly stipulated requirements

⁵ See the Commission's [18 December 2018 letter](#) explaining why submission of a revised application is necessary.

difficult for the Commission, or any other reviewer, to evaluate what MMHSRP is proposing. *Some* of those shortcomings include—

- Inconsistencies are evident throughout the application regarding whether incidental harassment of manatees, sea otters, walruses, and polar bears would occur during research *and* emergency response activities—in some instances, both types of activities are listed and in others, only one type of activity is listed, including in the take table.
- Justification should be provided regarding why taking of species under the Endangered Species Act (ESA) is necessary⁶.
- Information regarding the various objectives or hypotheses that could be investigated should be provided, as well as additional justification regarding how MMHSRP's activities meet the *bona fide* requirement under the MMPA⁷.
- Unintentional mortalities⁸ of at least one manatee should have been requested given that a manatee was struck by a boat during MMHSRP's activities in 2015⁹—MMHSRP indicated, in its annual report discussing those circumstances, that it planned to request an 'accidental injury' in its permit renewal¹⁰.
- Incidental capture of manatees and potentially sea otters should have been requested based on MMHSRP's acknowledgement in the application that, if an animal was accidentally captured, it would be released immediately¹¹.
- The types and origins of various samples that MMHSRP would possess, import, and/or export should have been specified in all of the relevant sections of the application¹².
- A single row in the take table should not include both incidental harassment activities, which are denoted by 'as warranted'¹³, and collection/possession/import/export of samples, which should be denoted by 'unlimited'¹⁴.
- The co-investigators who will be working under the permit must submit a CV, biosketch, or qualification form in support of the activities they would be authorized to conduct under the permit¹⁵.

Due to all these shortcomings, the Commission recommends that FWS return the application to MMHSRP with instructions to (1) abide by the 2017 application instructions, (2)

⁶ See item 6 in the 2017 application instructions.

⁷ Items 18 and 17, respectively, in the 2017 application instructions. Currently, this information is lacking.

⁸ Including euthanasia for humaneness purposes.

⁹ A team searched for the manatee after it was struck and observed to be alive, but the team could not relocate it to confirm whether it lived or died. Such an incident would be counted as a mortality under the permit, not an accidental injury. A mortality is presumed when an animal is injured and its fate cannot be determined.

¹⁰ See items 7c, 26, 27, and 28 in the 2017 application instructions.

¹¹ Takes of multiple animals should be requested, see item 7c in the application instructions.

¹² This includes whether the samples (1) originate from live or dead animals, (2) from live animals that were collected during permitted research on free-ranging or captive animals, husbandry activities on captive animals, or rehabilitation activities on temporarily captive animals, and (3) from dead animals that were collected during permitted research, legal fishing operations, subsistence hunting activities, in a captive setting (research or public display facilities), or in the wild (from dead stranded animals). See Items 12, 13, and 29 in the 2017 application instructions.

¹³ Incidental capture takes and unintentional mortalities should have numbers associated with them, 'as warranted' would not suffice.

¹⁴ This is specified in items 21 and 29 of the 2017 application instructions.

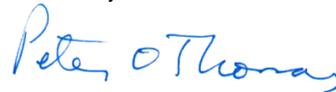
¹⁵ See item 30 of the 2017 application instructions.

Dr. Mary Cogliano
19 December 2018
Page 3

address the deficiencies stipulated herein, and (3) submit a revised application. Upon submission of a revised application that satisfies the requirements of FWS's 2017 permit application instructions, section 104(c)(3) of the MMPA, and applicable implementing regulations, FWS should process the revised application expeditiously and provide it to the Commission for formal comment and review when notice is published in the *Federal Register*. 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. Furthermore, the Commission recommends, prior to processing any additional applications or sending them to the Commission for review, FWS ensure that *all* applicants use the 2017 application instructions and, if an applicant has not used those application instructions, require that it does so and resubmits a revised application. FWS processes between 10 and 20 marine mammal permit applications per year so it should not be difficult for FWS to determine at the time the application is submitted¹⁶, whether an applicant has used the current instructions.

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

Sincerely,



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

cc: Diane Bowen, FWS
Teri Rowles, MMHSRP
Sara Wilkin, MMHSRP

¹⁶ Rather than many months later when an analyst reviews the information within the application.