



MARINE MAMMAL COMMISSION

27 March 2019

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: Revised Permit Application No. 773494
(Florida Fish and Wildlife Conservation
Commission)

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 revised permit application with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (the MMPA). The Florida Fish and Wildlife Conservation Commission (FFWCC) proposes to conduct research on West Indian manatees during a five-year period—the previous permit authorized similar activities.

FFWCC proposes to conduct research year-round on manatees throughout the southeastern United States. The purpose of the research is to investigate (1) life-history characteristics, (2) ecology, (3) migration patterns, and (4) distribution of manatees, as well as the impacts of human activities. Researchers would harass, observe, handle, restrain, measure/weigh, mark, sample¹, and/or instrument manatees of any age and either sex. FFWCC would use various measures to minimize impacts on manatees and would be required to abide by the U.S. Fish and Wildlife Service's (FWS) standard permit conditions. FFWCC received a waiver in 2013 from the Animal and Plant Health Inspection Service (APHIS) indicating that its activities, at that time, did not merit registration under the Animal Welfare Act and thus did not need Institutional Animal Care and Use Committee (IACUC) review or approval.

Application completeness and accuracy

FFWCC originally submitted its application to FWS in April 2018, which was provided to the Commission for informal review in November 2018. The Commission noted numerous deficiencies and inconsistencies in the application in its [20 December 2018 letter](#)² and recommended

¹ Manatee samples apparently could be collected from wild or captive animals. Samples also could be received from permitted researchers in the United States.

² Including that FFWCC did not use FWS's 2017 application instructions when it first drafted its application and that FWS did not notify FFWCC that it did not follow the current application instructions.

that FWS return the application to FFWCC and ask it to follow the 2017 application instructions, address the noted shortcomings, and submit a revised application. The Commission recommended at the time that if the application was processed in its present state it should be denied as not meeting the applicable requirements. The Commission sent a copy of that letter to FFWCC.

The Commission was provided FFWCC's revised application in March 2019. It was evident that FWS had not requested FFWCC to address the Commission's comments and concerns with the original application. As stated in previous Commission letters³, 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 the relevant (i.e., 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). The Commission provides its comments with the expectation either that FWS will send the Commission's comments and questions to the applicants and require that they provide the requested clarifications and additional information or that FWS will provide the requested information itself.

FWS did not explicitly request that FFWCC revise its application based on the 2017 application instructions. The Commission appreciates that FFWCC directly addressed a few questions based on the 2017 application instructions, but the majority either were not answered or answered indiscriminately in supplementary documents appended to the application. As such, it is very difficult to ascertain exactly what FFWCC is proposing. More concerning, FFWCC chose not to address many of the application sections directly and only provided reference to the supplementary documents. The Commission believes that the intent of FWS's application instructions is for the applicant to provide answers to various sections within the application text. Reviewers, whether from the Commission or the public, should not have to sort through supplementary documents to obtain answers to the application questions or be forced to discern what the applicant plans to do.

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". Therefore, it is imperative that the application contain accurate, complete, and consistent information. When a permit is issued on the basis of an application that contains inaccurate, inconsistent, and unclear information, the permit holder risks unintentionally violating the permit because of the lack of clarity regarding which information the agency thought it had approved by way of the permit. Again, applications that contain inaccurate and inconsistent information make it difficult, and sometimes impossible, for the public and the Commission to provide meaningful comments.

General outstanding issues

Although FFWCC's revised application addressed a few of the Commission's concerns raised in its December 2018 letter, basic information required in FWS's 2017 application instructions is still lacking and numerous deficiencies and inconsistencies still exist. In addition, the information

³ See its [18 December 2018 letter for USGS](#) and [18 December 2018 letter for Dr. Karyn Rode](#).

provided in the revised application has raised a few new issues. *Some* of the continued concerns with the revised application include its failing to—

- provide details on the proposed unmanned aircraft system (UAS), including the maximum size and mass of the UAS and the minimum altitude at which the UAS would operate, etc.⁴;
- provide details on the minimum age of calves to be captured, handled, sampled, marked⁵, and instrumented and justification of why those procedures must be conducted on calves, which would include neonates⁶;
- provide (1) the mass of the digital acoustic recording tag (DTAG), (2) the maximum number of devices and maximum combined mass to be used at a given time, (3) the release mechanism for DTAGs, and (4) whether old tags and belts would be removed when new ones are attached⁷;
- specify the timeframe over which two unintentional mortalities⁸ are requested⁹;
- adequately explain whether research would be conducted on captive animals¹⁰ and, if so, what those activities would entail¹¹—some of the institutions listed in the application are not rehabilitation facilities and hold manatees permanently for display purposes;
- specify the types and dosages of drugs to be administered “in the event that drug therapy is deemed medically necessary”¹²;
- justify the need to biopsy sample 1,600 manatees up to 10 times per year, particularly given that the annual reports provided by FWS from 2010 and 2011¹³ indicated that only 3 samples were taken per individual;
- specify whether incidental capture takes would be necessary¹⁴;
- address possible incidental harassment of bottlenose dolphins during the proposed activities¹⁵;
- specify the number¹⁶, type, and origin of samples to be obtained from permitted researchers¹⁷;

⁴ See Item 20c in the 2017 application instructions.

⁵ By all the various means (i.e., freeze branding, grease marking, PIT tagging, etc.).

⁶ See Item 23 in the 2017 application instructions.

⁷ See Item 20e in the 2017 application instructions.

⁸ Including intentional mortalities via euthanasia for humaneness purposes.

⁹ i.e., two mortalities/year or two mortalities/five-year duration of the permit.

¹⁰ The application should specifically state whether activities would occur on permanently captive animals, as well as temporarily captive animals that are being rehabilitated.

¹¹ If research would be conducted on captive animals, FFWCC should expound upon items 18, 19, 20, and 32, 33 in the 2017 application instructions. It is not sufficient for FFWCC to state that it does not intend to conduct research on animals in a captive-holding facility at this time but that it may wish to do so in the future. Any and all activities that could occur on captive animals during the next five years must be included in the permit application, otherwise the activities would not be authorized.

¹² Item 20a in the 2017 application instructions should be addressed accordingly.

¹³ FWS should have provided more recent annual reports. Reports from nearly 10 years ago may not be relevant currently.

¹⁴ Incidental captures would occur if FFWCC captures a manatee but decides to release it rather than handle it further. See Items 10 and 21 in the 2017 application instructions.

¹⁵ See Items 7a–c in the 2017 application instructions.

¹⁶ Including age class and sex.

¹⁷ See Items 29k–m in the 2017 application instructions. It is not sufficient for FFWCC to state that it does not plan to receive samples from U.S. permitted researchers at this time but that it may wish to do so in the future. Any and all

- provide an explanation for the objectives and hypotheses associated with receiving/possessing samples from permitted researchers¹⁸;
- specify prudent mitigation measures¹⁹;
- delineate the duties and responsibilities of the principal investigator (PI) and each (CI) and provide evidence in CVs that each person has sufficient experience to capture and handle (including mark, sample, and instrument) manatees and to conduct each of the activities that he or she would be authorized to conduct under the permit²⁰; and
- include an accurate take table.

Specifically, the take table should (1) include a row for incidental captures and designate them as Level A harassment²¹, (2) stipulate that equipment removal is considered Level A harassment, not Level B harassment²¹, and include it in the tagging row, (3) stipulate that the 1,600 proposed biopsy sampling takes are considered Level A harassment²¹, not Level B harassment, (4) specify the maximum number of manatees to be taken during aerial surveys²², (5) include underwater photography in the photo-id row, and (6) include grease marking of calves in the PIT tag and freeze brand row.

As noted herein, FFWCC received a waiver from APHIS in 2013. However, many of FFWCC's activities proposed in the current application—both those that could occur on captive animals and those that are proposed for wild animals—are considered invasive procedures and require IACUC review and approval²³. A finding made by APHIS in 2013 does not apply indefinitely²⁴. Other entities, including those that conduct the same types of activities on manatees (i.e., Mote Marine Laboratory, U.S. Geological Survey, etc.) or on other marine mammals (i.e., Alaska Department of Fish and Game, FWS, SeaWorld, etc.), have their research protocols reviewed and approved by an IACUC prior to conducting any of the activities. If FFWCC does not have an

activities that could involve obtaining samples from other researchers during the next five years must be included in the permit application, otherwise the activities would not be authorized.

¹⁸ See Item 18 in the 2017 application instructions.

¹⁹ Observers would only monitor a manatee's respiration in the capture net and ensure that all animals in the net are accounted for, *when feasible*. Those measures should be implemented all of the time. If a manatee exhibits an avoidance response, FFWCC states only that the duration of vessel disturbance would be minimized, not that vessels would back off and leave the animal. In addition, if an animal reacts adversely to the presence of a UAS, the UAS's altitude would be increased by certain increments indefinitely until photography becomes ineffective; whereas, fixed-wing aircraft would abort if the animal is still reacting adversely to its presence after three attempts to photograph it. This latter measure should be employed for UASs as well.

²⁰ See Item 30 in the 2017 application instructions. As noted in a previous letter, it is difficult to ascertain what activities the various PI/CIs have conducted and the level of their expertise based on information contained in CVs. Moreover, the Commission cannot confirm the various institutions at which the PI/CIs have received their education or training or the start dates and durations of their education and work experience based on FWS's redactions in the CVs that were provided. In short, details regarding education and work experience are necessary and should not be redacted from any document provided to support a PI/CI's experience, and biosketches should be provided in lieu of or in addition to CVs.

²¹ Consistent with the same activities proposed to be conducted on manatees by Sea to Shore Alliance in its application for permit #37808A.

²² Noting the 'entire population' is not sufficient.

²³ Furthermore, FFWCC's proposed activities are considered research activities rather than wildlife management activities.

²⁴ Which APHIS confirmed with the Commission.

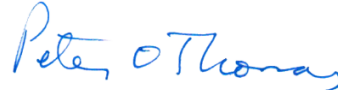
Dr. Mary Cogliano
27 March 2019
Page 5

IACUC, it can request that an IACUC of one of its collaborators (e.g., Mote Marine Laboratory, USGS, SeaWorld) or of a nearby academic institution review the protocols.

Based on the remaining inconsistencies, missing information, and unclear responses in FFWCC's revised application and the lack of IACUC review and approval, the Commission recommends that FWS deny the requested permit.

The Commission remains committed to working with FWS to improve the quality of applications and efficiencies associated with the permitting process. Please contact me if you have any questions regarding the Commission's comments and recommendation.

Sincerely,



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

cc: Dr. Barbara Kohn, APHIS