



MARINE MAMMAL COMMISSION

26 November 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

Dear Dr. Cogliano:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Department of Interior's (DOI) notice (84 Fed. Reg. 56466) regarding revisions to information collection requirements under the Marine Mammal Protection Act (the MMPA) and Endangered Species Act (ESA). Under those statutes, certain actions affecting marine mammals and endangered and threatened species are prohibited unless authorization is obtained from the responsible federal agency. Researchers, photographers, public display facilities, and members of the public seeking authorization to take or import marine mammals or listed species are required to apply for a permit to conduct their proposed activities. U.S. Fish and Wildlife Service (FWS) requires certain types of information to make the necessary findings and issue permits under the applicable statutes and regulations. Permit holders then must report on their activities to track compliance with permit conditions and to ensure protection of the animals. FWS requests comments on its "ePermits" initiative but has not revised its application instructions for obtaining a permit to take or import marine mammals under the MMPA or ESA. The Commission provides the following detailed comments on the ePermits initiative, as well as the current permit application instructions.

ePermits initiative

FWS stated in the *Federal Register* that it would be transitioning to a fully-automated, online system, via its "ePermits" initiative, for the submission, processing, and revision of permit applications to help streamline the permitting process (84 Fed. Reg. 56466). The Commission has encouraged and fully supports FWS's taking of steps to adopt an online system for its marine mammal permit applications. Requiring applicants to submit and revise their applications through the ePermits system, instead of through mailing hard-copy applications, application revisions, and clarifications about those applications, should facilitate the timely review of such documents by FWS, the Commission, and the public. The ePermits initiative also would help to standardize, and thus likely reduce deficiencies in, addressing the application instruction requirements. Therefore, the Commission recommends that FWS prioritize the implementation of its ePermits initiative and require that all marine mammal applications be submitted and revised using the online system.

Application completeness and accuracy

When the various permit applications have been provided by FWS to the Commission for its review, the Commission has repeatedly noted in its informal¹ and formal comments² that the application instructions have not been followed and necessary information is missing entirely, insufficient, or inconsistent within the application. As such, the Commission recommends that FWS ensure that all applicants have addressed fully each of the relevant requirements in the application instructions prior to sending the application to the Commission for its review.

Level A and B harassment takes

FWS's current application instructions for public display and research and enhancement permits require that applicants denote procedures in their take tables³ as takes by either Level A or B harassment⁴. FWS defines Level A and B harassment in its instructions to help applicants distinguish between the terms, but the Commission has found that applicants often incorrectly denote various procedures⁵. It is actually not necessary to denote whether procedures constitute Level A or B harassment to support the findings required under section 104(c) of the MMPA or FWS's implementing regulations. NMFS's application instructions for public display or research and enhancement permits do not require this information for NMFS species. Further, mortalities should be denoted on separate rows under the "procedure/activity" column in the take table and applicants should specifically request unintentional or intentional mortalities rather than denote those as "other take." This would again be consistent with how NMFS handles mortality takes for its research and enhancement permits. Thus, the Commission recommends that FWS (1) remove the requirement to denote procedures as Level A or B harassment or other take, and (2) ensure that mortality takes are denoted on separate rows and classified appropriately in the "procedure/activity" column of take tables.

Personnel duties and qualifications

FWS requires an applicant to "provide a list of all personnel that will be involved in the project, identifying each as either a principal investigator or co-investigator, their project duties/responsibilities, and a brief description or CV that demonstrates their experience and expertise to perform their designated duties, including knowledge of the marine mammal species that is/are the subject of this application."⁶ However, as the Commission has noted in its informal comments on applications⁷, as well as in its formal letters⁸, applicants often do not clearly differentiate the duties and responsibilities of the principal investigator (PI) and the co-investigators (CIs), which makes it difficult to know which activities the PI/CI would be authorized to conduct

¹ E.g., U.S. Geological Survey (USGS) permit 672624, USGS permit 067925, SeaWorld permit 16657D, and University of California at Davis permit 98121C.

² E.g., Florida Fish and Wildlife Conservation Commission (FWC) permit 773494, ABR, Inc. permit 75595C, Rode permit 85339C, and Marine Mammal Health and Stranding Response Program permit 009526.

³ Item 21c in FWS's 2017 application instructions.

⁴ Or other types of taking such as mortalities.

⁵ E.g., denoting biopsy sampling, which has the potential to injure a marine mammal, as constituting Level B harassment.

⁶ Item 30 of research/import/public display applications and Item 23 of commercial photography applications.

⁷ E.g., USGS permit 067925 and USGS permit 672624.

⁸ E.g., [27 March 2019 letter](#) for FWC.

under a permit. The Commission understands that it can become unwieldy to write out all procedures that all PI/CIs would conduct under a permit, especially when dozens of procedures or PI/CIs would be authorized. To reduce the burden on applicants, FWS should require them to provide a personnel table that lists each PI/CI and each procedure that he or she would be authorized to conduct, as designated by an X (see Table 1 as an example). These types of tables have been used routinely by nearly all NMFS applicants who have proposed to conduct live-capture activities in the last three years and by other applicants who have proposed to conduct numerous invasive procedures. The Commission has recently recommended that NMFS incorporate such types of tables in its revised application instructions (see [14 November 2019 letter](#)). For clarity regarding the activities that each PI/CI would be authorized to conduct and be authorized to conduct if the permit is issued, the Commission recommends that FWS require applicants to provide a personnel table based on the example provided herein for applications involving live-capture activities and multiple invasive procedures.

Table 1. Example personnel table.

Name	Role	Photo-id	UAS	Biopsy	External instrumentation	Collect blood samples
Jon Doe	PI	X		X	X	X
Jim Doe	CI	X		X	X	X
James Doe	CI	X				
Jane Doe	CI	X		X		X
Mary Doe	CI	X	X	X		
Dave Doe	CI	X				
Harry Doe	CI	X		X	X	X

The Commission also has repeatedly noted⁹ that PI/CIs do not provide evidence in their CVs that they have sufficient experience to perform the activities that they would be authorized to conduct under a permit. FWS’s application instructions do not require PI/CIs to have a certain level of experience performing a certain procedure in order to demonstrate that they have adequate experience and expertise “to perform their designated duties.” By contrast, NMFS has established as part of its revised application instructions a level-of-experience system on a 1 to 4 scale¹⁰ to determine which PI/CIs should be authorized to conduct activities¹¹. In the absence of such a standard for FWS’s permits, it appears as though PI/CIs are uncertain about what information should be included in their CVs as evidence of qualification to conduct procedures. PI/CIs should be authorized under NMFS permits often submit Qualification Forms (QFs) instead of CVs, and

⁹ E.g. the Commission’s [19 December 2018 letter](#) on ABR Inc.’s permit.

¹⁰ Level 1 denotes having assisted or received education/training in performing the procedure, but have **not successfully performed** the procedure. Level 2 denotes having performed the procedure while **under supervision or training** of an expert (e.g., PI, CI, or veterinarian). Level 3 denotes having performed the procedure **without supervision** by a PI/CI. Level 4 denotes being considered an **expert** in performing this procedure, and having **supervised or trained** others in performing this procedure.

¹¹ The Commission asserts that PI/CIs should only be authorized to conduct activities that they have conducted successfully under supervision (Level 2).

such forms allow individuals to denote their level of experience for procedures as well as to describe their experience conducting those procedures in a table (see Table 2 as an example). Use of QFs is easy and provides the necessary information in a clear manner, minimizing the questions that routinely arise when CVs are used and thereby maximizing efficiency. QFs also facilitate cross-checking of a PI or CI's level of experience performing a procedure with the procedures that he or she would be authorized to conduct as indicated in a personnel table. Therefore, the Commission recommends that FWS (1) establish a standardized qualification system similar to that of NMFS, (2) authorize PI/CIs to conduct procedures according to this qualification system, and (3) require that, instead of a CV, each PI or CI submit a QF table based on the example provided.

Table 2. Example QF table for Jon Doe.

Procedures	Experience Metrics: Estimated Number of Animals, Hours/Months/Years, Species, and Age Class of Study Subjects	Most Recent Year Performed	Level of Experience
Photo-identification	Used digital photos from remote cameras or observers to identify individual walruses from tags. 20 years of experience.	2018	4
Sample, tissue biopsy	Biopsy-sampled approximately 50 adult and juvenile walruses using remotely-deployed darting methods. 10 years of experience.	2016	3
Instrument, external	Remotely deployed external satellite-linked transmitters on 2 walruses.	2015	2
UAS pilot	None		

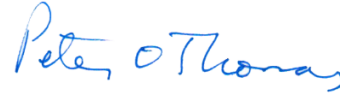
Burden hours on applicants

FWS indicated in its application instructions that it expects applicants to take an average of 2 hours 20 minutes (referred to as the “relevant burden”) for public display and research and enhancement permits and amendments and 1 hour 30 minutes for commercial photography permits. Those burdens include the time to review the instructions, gather and maintain data, and complete and review an application form. The Commission asserts that those burden hours have been grossly underestimated. NMFS estimates in its application instructions that applicants will complete and review an application for a research and enhancement permit in an average of 50 hours and a commercial photography permit in 10 hours. Thus, the Commission recommends that FWS reconsider and adjust its burden hours for applicants to complete and review an application for public display and research and enhancement permits and commercial photography permits to ensure they are commensurate with the time actually required to complete such a task.

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The Commission appreciates discussions to date with FWS staff and the opportunity for future consultation on these matters. Please contact me if you have any questions regarding the Commission's recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive style with a large initial "P" and "T".

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