



MARINE MAMMAL COMMISSION

10 December 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: Permit Application No. 33776D
(U.S. Geological Survey)

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).

U.S. Geological Survey (USGS) proposed to conduct research on Pacific walrus in Alaska during a five-year period—permit 801652 authorized similar activities. Researchers would harass, observe, photograph/videotape¹, sample², and instrument³ individuals of any age class and either sex (see the take table for specifics). USGS requested up to six unintentional mortalities⁴ of walrus in a year. The purpose of the research is to investigate (1) abundance and distribution, (2) demography, (3) population structure and trends, (4) movement patterns and habitat use, and (5) foraging ecology of walrus. USGS would implement various measures to minimize impacts on walrus and also would be required to abide by the U.S. Fish and Wildlife Service's (FWS) standard permit conditions. USGS's Institutional Animal Care and Use Committee has reviewed and approved the research protocols.

Completeness and accuracy of application

In its informal review of USGS's application, the Commission noted numerous deficiencies and inconsistencies, including issues regarding the welfare of walrus to be taken for research purposes. The Commission requested that FWS ask the applicant to address the noted shortcomings

¹ Including using unmanned aircraft systems (UAS).

² Including remotely-collected skin and blubber samples using a crossbow.

³ With remotely-deployed satellite-linked radio tags using a crossbow.

⁴ Including euthanasia for humaneness purposes.

and questions and submit a revised application that incorporated responses to the Commission's and FWS's concerns.

The Commission received responses to only some of its concerns, along with the original application. It was evident that FWS had not provided many of the Commission's comments and questions to USGS, and thus critical pieces of information were not incorporated into the application. Those comments and questions that were passed to the applicant had been altered, resulting in responses from USGS that were not relevant and did not adequately address the Commission's original comments and questions. As stated in previous Commission letters, 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 serve as the basis for recommending appropriate permit conditions for inclusion in furtherance of MMPA section 104(b)(2). The Commission provides its informal comments and questions with the expectation that either FWS will send them in their entirety to the applicants and require that the applicants provide the requested clarifications and additional information, or FWS will provide the requested information itself.

FWS did not ask USGS to incorporate those responses to Commission and FWS comments and questions that it did receive into a revised application. Instead, FWS accepted responses from USGS in supplementary documents appended to the original application, creating a situation in which the supplemental documentation often contradicts the information in the application. Since the application itself ultimately underpins the actual permit issued, an application that contains inaccurate, inconsistent, or unclear information puts the permit holder at risk of violating the permit unintentionally as a result of the lack of clarity regarding what the agency actually intended for the permit to approve. Reviewers, whether from the Commission or the public, should not have to sort through supplementary documents to discern what the applicant plans to do or to piece together responses to the application requirements.

General outstanding issues

Although a few of the responses received from FWS regarding USGS's original application addressed the Commission's initial concerns, the application is still technically incomplete until those responses have been incorporated. More importantly, basic information required in FWS's 2017 application instructions is still lacking and numerous deficiencies and inconsistencies still exist, including discrepancies between the original application and supplementary documents. *Some* of the continued concerns with USGS's application include its failure to—

- specify consistently whether calves would be targeted for biopsy sampling and tagging⁶;

⁵ See its [27 March 2019 letter for Florida Fish and Wildlife Conservation Commission](#), [18 December 2018 letter for USGS](#), and [18 December 2018 letter for Dr. Karyn Rode](#).

⁶ Item 18 of FWS's 2017 application instructions. USGS stated in its original application that it would biopsy sample and tag calves but indicated in its supplementary documents that calves would be avoided for both activities.

- provide justification for disinfecting harpoons and darts with alcohol rather than using standard sterilization methods⁷;
- adequately describe the methods, objectives, and sample sizes for age-structure surveys⁸;
- specify whether UAS surveys would be conducted over walruses on both land and ice⁹.
- denote whether the UAS pilots to be authorized under the permit have either Federal Aviation Authority or Office of Aviation Service remote pilot certifications¹⁰;
- clearly indicate during which activities female-calf pairs would be targeted and sufficiently describe how impacts on those pairs would be minimized¹¹;
- specify whether walruses would be targeted in the water, on ice, and/or on land for both biopsy sampling and tagging, how individuals would be selected for biopsy sampling and tagging to minimize chances of a stampede, and what mitigation measures would be implemented if walruses are unduly harassed or stampede as a result of those activities¹²;
- request six mortalities as a result of any of the research activities, not just UAS surveys, as was authorized under its previous permit¹³;
- provide descriptions of the source of samples to be salvaged or collected and the sample collection protocol for specimens taken from live walruses¹⁴;
- clarify whether samples would be imported, exported, and re-exported, all of which were authorized under its previous permit¹⁵;
- describe the necessary information in a form that allows reviewers to ascertain that the principal investigators and co-investigator have sufficient experience to supervise and conduct, respectively, all of the activities for which the permit authorizes them¹⁶;
- specify which personnel would be authorized to conduct which activities under the permit¹⁷; and
- include an accurate take table.

⁷ Item 18 of the application instructions.

⁸ Item 18 of the application instructions. It is not sufficient to merely quote the methods from another study.

⁹ Item 18 of the application instructions.

¹⁰ Item 20(c)(xi) of the application instructions.

¹¹ Item 22 of the application instructions.

¹² Item 24 of the application instructions.

¹³ Item 26 of the application instructions. Even though USGS has not unintentionally killed a walrus during previous biopsy sampling and tagging activities, the possibility still exists and if authorization is not granted for mortalities and one should occur, USGS would be in violation of its permit.

¹⁴ Item 29(k-m) of the application instructions. If samples also would be received domestically from permitted researchers, the researchers' names, affiliations, and permit numbers under which samples would be or were collected should be provided and item 12 of the application instructions should be completed.

¹⁵ USGS indicated in its initial response to item 12 of FWS's application instructions and in its supplementary documents that it *was not* requesting to import, export, or re-export samples but indicated in response to item 13 of the instructions that it *was* requesting such authorization.

¹⁶ Item 30 of the application instructions. As noted in the Commission's [26 November 2019 letter regarding FWS's application instructions renewal](#), it is difficult to ascertain what activities a principal investigator and co-investigators (CIs) have conducted and the level of their expertise based on information contained in CVs. Qualification forms similar to those used by the National Marine Fisheries Service should be provided in lieu of CVs.

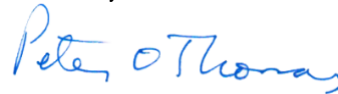
¹⁷ Item 30 of the application instructions. It is not sufficient to request that other individuals be added to the permit providing that they have sufficient experience, as the experience and qualifications of all CIs must be assessed prior to authorization. If there is a need to add personnel to the permit, a request for a minor amendment should be submitted and the relevant levels of experience and expertise described.

Specifically, the take table should (1) clarify the maximum number of times a walrus could be biopsy sampled and tagged simultaneously in a year¹⁸, (2) specify whether a walrus could be both biopsy sampled *and* biopsy sampled and tagged simultaneously more than once in a given year, (3) include additional takes per walrus per year for all activities that could occur multiple times in a year, including vessel and UAS surveys, and (4) include mortality takes for all of the activities, as was authorized under the previous permit¹⁹.

Based on missing and unclear information and the remaining inconsistencies in USGS's application and supplementary documents, 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

¹⁸ Item 21(g) of the application instructions. In its initial application, USGS requested one take per walrus per year for biopsy sampling and tagging. However, in its supplementary documents, USGS requested one take per walrus for biopsy sampling and indicated "2 (tag and biopsy)" as the number of takes requested in the tagging row. It is not clear whether USGS was in fact requesting for a walrus to be simultaneously tagged and biopsy sampled twice in a year or was incorrectly enumerating the takes for such procedures as two when it should be one, as an animal cannot be taken more than once in a given day.

¹⁹ Item 21(c) of the application instructions.