



# MARINE MAMMAL COMMISSION

11 February 2020

Ms. Jolie Harrison, Chief  
Permits and Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Re: Permit Application No. 23203  
(Environmental Institute of Houston)

Dear Ms. Harrison:

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 Environmental Institute of Houston (EIH) is proposing to conduct research on bottlenose dolphins in the Gulf of Mexico during a five-year period—Texas SeaLife Center permit 18881 and general authorization 18715 authorized similar activities.

The purpose of the research is to investigate (1) population abundance, population structure and rate of increase, (2) distribution and habitat use, (3) diet, and (4) health of bottlenose dolphins along the Texas coast. Researchers would also assess the behavioral responses of dolphins to human activities. EIH would harass, observe, photograph/videotape<sup>1</sup>, conduct photogrammetry on, passively record, and/or biopsy sample numerous bottlenose dolphins of any age class and either sex (see the application and take tables for specifics). Researchers would use various measures to minimize impacts on marine mammals and would be required to abide by the National Marine Fisheries Service's (NMFS) standard permit conditions. EIH's Institutional Animal Care and Use Committee has approved the proposed research protocols.

## **Takes per animal**

EIH stated in its application that individual bottlenose dolphins could be approached multiple times in a year during aerial or vessel-based surveys. Although those individuals could be harassed multiple times per year, EIH only requested one take per animal in its take table. In its informal review of the application, the Commission noted that EIH should increase the number of takes per animal based on the number of times an individual could be taken during those activities, which is consistent with NMFS's 2016 application instructions. Re-sighting rate information on dolphins in the study area is also likely available based on survey report data from Texas SeaLife Center permit 18881. However, NMFS stated that multiple takes per animal were not needed in the take table, asserting that such information was already sufficiently noted in the details section of the

<sup>1</sup> Including with unmanned aircraft systems.

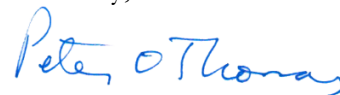
table because animals could be retaken different numbers of times. It also indicated that multiple takes per animal could not be entered as data in the take table of an annual report. The Commission finds both of these justifications unsatisfactory.

The “takes per animal” column is intended to describe the number of times an individual could be taken by the specified procedures in a given year. Applicants generally base the “takes per animal” on the maximum number of times that an animal could be taken (i.e., number of surveys that would be conducted). This approach has been used for numerous permits involving cetaceans<sup>2</sup>, as well as pinnipeds<sup>3</sup>. Furthermore, including a statement in the details section that animals may be taken more than once a year while leaving a 1 in the “takes per animal” column is contradictory. Thus, it remains unclear to the Commission and the public whether and how many times EIH would be authorized to take an animal in a year. In addition, it appears that NMFS’s approach to the “takes per animal” issue may be based on the concern that permittees are unable to report the number of takes per animal in NMFS’s application and reporting system (Authorizations and Permits for Protected Species (APPS)). If that is indeed the limiting factor, then APPS should be amended to collect that information, when available.

The Commission has commented, and provided recommendations<sup>4</sup>, for many years on the manner in which NMFS populates take tables for Level B harassment, but inconsistencies in approach persist across applications. Therefore, the Commission recommends that NMFS (1) base the “takes per animal” in EIH’s permit and all other permits on the estimated maximum number of times an individual could be taken in a given year by the various methods of taking and (2) amend the reporting fields in APPS appropriately to enable permittees to provide that information, when available.

The Commission believes that the proposed activities are consistent with the purposes and policies of the MMPA. Please contact me if you have any questions regarding the Commission’s recommendation.

Sincerely,



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

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<sup>2</sup> See, for example, permits issued to the Marine Mammal Lab (MML, 20465) and Tamara McGuire (18016).

<sup>3</sup> See, for example, permits issued to MML (16087 and 18528) and Alaska Department of Fish and Game (20466, 20443, and 18537).

<sup>4</sup> See, for example, its [7 May 2019 letter](#) for Marine Mammal Lab, [14 November 2019 letter](#) for NMFS’s revised application instructions, and [22 January 2020 letter](#) for BBC.