



MARINE MAMMAL COMMISSION

22 December 2021

Ms. Martha Williams, Esq.
Principal Deputy Director
U.S. Fish and Wildlife Service
1849 C Street Northwest
Washington, DC 20240

Re: Permit Application No. 76904D
(San Diego Zoo Alliance)

Dear Ms. Williams:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, reviews permit applications with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (the MMPA). The Commission has reviewed San Diego Zoo Alliance's (SDZA) permit application (76904D) submitted to the Fish and Wildlife Service (FWS) seeking authorization to conduct scientific research on captive polar bears.

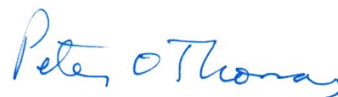
SDZA's application describes several previous and hypothetical research projects that could be conducted on polar bears but does not specify which projects or procedures would be conducted under the permit. Instead, SDZA states that details of the research projects would be worked out later for review and approval by the Polar Bear Research Council outside of the public review process established under the MMPA and after the permit is issued. The Polar Bear Research Council is a group formed by the Association of Zoos and Aquariums (AZA) and field researchers to advise AZA members on polar bear research priorities, but it is not a governmental entity and has no authority to implement or make determinations under the MMPA. The application indicates that research activities could be conducted at up to 21 facilities. It also concludes that the proposed research would be performed in ways that would not constitute harassment or take under the MMPA, including invasive activities such as collecting tissue biopsies. SDZA further indicates that it intends to import polar bears for some of the proposed research activities, but did not request authority to import bears or to take them outside of the United States. Rather, the SDZA explains that any facility seeking to import polar bears to conduct research under its permit would submit a separate import permit application.

In short, the application describes the skeleton of a research program, but is missing nearly all of the information required by FWS's 2017 application instructions for a scientific research permit. It does not provide sufficient detail for FWS, the Commission, or members of the public to understand exactly what is being proposed or to assess whether that research meets the statutory issuance criteria for a scientific research permit.

Based on comments and questions from FWS to SDZA that were added to the version of the application shared with the Commission, it appears that FWS attempted numerous times to work with SDZA to resolve the omissions and ambiguities in the application. SDZA has yet to provide the information necessary for FWS to deem the application complete. FWS's implementing regulations specify that an application *must contain* various types of information that SDZA's application still lacks (see 50 C.F.R. §18.31(a)(1)–(5)). There is nothing in the FWS regulations or application instructions that compels FWS to process an application that is incomplete or insufficient or to make it available for public review. In fact, FWS should only publish a *Federal Register* notice initiating public review for those applications that it deems to be complete and compliant with the issuance criteria. To do otherwise is a waste of everyone's time. Therefore, the Commission strongly recommends that FWS find SDZA's application to be incomplete, suspend its review, refrain from further processing, and withdraw any notice submitted to the *Federal Register* until SDZA submits a complete application that addresses all of the items in FWS's 2017 application instructions. If FWS decides to continue processing the application in its present form, the Commission will recommend that SDZA's application be denied for failing to demonstrate that it meets the issuance criteria under section 104 of the MMPA, particularly those regarding humaneness and whether the proposed research will further a *bona fide* scientific purpose.

The Commission is also extremely concerned about the proposal by the applicant to defer certain key determinations until after permit issuance and to delegate decision-making for them to the Polar Bear Research Council. In this regard, sections 101(a)(1) and 104 of the MMPA clearly specify that it is the Secretary, in consultation with the Commission and its Committee of Scientific Advisors, that has authority to issue and set the terms and conditions of permits, including those authorizing the taking or importation of marine mammals for the purposes of scientific research. Making determinations as to whether issuance criteria are met and issuing permits are inherently government functions that cannot be delegated to anyone other than the authorized federal officials. The Commission recommends that FWS explain this point clearly to the applicant and associated facilities. It would be unlawful for FWS to issue a speculative permit that defers or delegates key determinations required under the MMPA to an unauthorized, non-governmental entity.

Please contact me if you have any questions regarding the Commission's recommendations.



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

cc: Sarah Krakoff, Deputy Solicitor, Parks and Wildlife, Department of the Interior
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