



# MARINE MAMMAL COMMISSION

10 March 2022

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. 26254  
(Alaska Department of Fish and Game)

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 amendment request with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (the MMPA). Alaska Department of Fish and Game (ADFG) proposes to conduct research on ice seals in Alaska during a five-year period—permit 20466 authorized similar activities.

ADFG proposes to conduct research on spotted, ringed, bearded, and ribbon seals in the Bering, Chukchi and Beaufort Seas. The purpose of the research is to investigate ice seal (1) abundance and distribution, (2) demographic parameters, (3) habitat use and movement patterns, and (4) disease and health. Researchers would harass, observe, photograph/videotape, handle, restrain, measure/weigh, sedate<sup>1</sup>, mark<sup>2</sup>, sample<sup>3</sup>, conduct ultrasound on, and/or attach instruments<sup>4</sup> to numerous individuals<sup>5</sup> of each species of either sex per year (see the take table for specifics). In addition, samples could be collected from seals hunted for subsistence. ADFG requested up to five mortalities<sup>6</sup> for each ice seal species and one beluga whale mortality<sup>7</sup> per year, as well as authorization to import, receive, transfer and export samples. Researchers would use various measures to minimize impacts on marine mammals that might be harassed incidentally and also would be required to abide by the National Marine Fisheries Service's (NMFS) standard permit conditions. ADFG's Institutional Animal Care and Use Committee has reviewed and approved the proposed research protocols.

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<sup>1</sup> Including remotely-delivered sedation (i.e., darting) and drug reversals for adult bearded seals only.

<sup>2</sup> With flipper tags.

<sup>3</sup> Including blood, swabs, skin, and hair.

<sup>4</sup> Including with acoustic recorders, accelerometers, and satellite tags. Up to four instruments per animal with a combined instrumentation mass of less than 3 percent of the body mass.

<sup>5</sup> Excluding unweaned pups and lactating females.

<sup>6</sup> Either unintentional or intentional mortality (i.e., euthanasia for humaneness purposes).

<sup>7</sup> In case a beluga whale drowned or was seriously injured incidentally during net captures. Includes unintentional or intentional mortality (i.e., euthanasia for humaneness purposes).

## Permit review process

On 14 February 2022, NMFS published ADFG's application in the *Federal Register* (87 Fed. Reg. 8235) for public comment. Based on its informal review of the application available online, the Commission found that some of the information required in NMFS's 2016 application instructions and its implementing regulations was not consistent or clearly articulated in the application. As the Commission has stated repeatedly in previous letters<sup>8</sup>, it is NMFS's responsibility to ensure that applicants provide consistent information, abide by the application instructions, and provide the information necessary to establish that an application is complete prior to publishing a notice of availability in the *Federal Register*. By continuing to publish applications with missing, insufficient, or inconsistent information, NMFS perpetuates a review process that lacks transparency and makes it difficult for the Commission and the public to provide meaningful assessments<sup>9</sup>. Therefore, the Commission recommends that, prior to publication of any application in the *Federal Register*, NMFS staff review each application in light of the applicable instructions to ensure that all required information is included, is internally consistent, is consistent with NMFS's policies, and is in a format that facilitates review by the Commission and the public.

In accordance with NMFS's recently revised permit process, the Commission provided to NMFS a list of informal comments and questions, yet the Commission received only the applicant's responses to its comments and questions, not a final, revised application. While most of the responses were sufficient to address the Commission's initial concerns, only some of the responses indicated that the application would be amended accordingly. Even though NMFS has confirmed that all relevant responses would be incorporated in a final application for ADFG, the Commission remains concerned that some final permits and applications continue to *not* be revised based on relevant responses to the Commission's informal comments on applications<sup>10</sup>. If NMFS decides to issue a permit to ADFG, the Commission recommends that NMFS ensure that the final permit and application include the relevant revisions based on responses to the Commission's informal comments.

## Floating traps

Consistent with its application for permit 20466, ADFG once again proposed to use a floating trap, which has been used to capture ice seals successfully in Russia but not in the United States<sup>11</sup>. The trap is made with hinged slatted doors and a net-framed box that floats in the water column. When a seal attempts to haul out on the slatted platform, it would drop through the doors into the net box<sup>12</sup>. ADFG indicated that seals would be able to surface and breathe through the

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<sup>8</sup> e.g., its [7 September 2021 letter](#) for Southwest Fisheries Science Center (SWFSC) and its [24 August 2021 letter](#) for Dr. Daniel Costa.

<sup>9</sup> The Commission began conducting more detailed informal reviews of applications five years ago when it became apparent that NMFS was not ensuring that its application instructions were being followed and that accurate and consistent information was being provided by the applicant. Prior to this informal review process, final applications were often inaccurate or inconsistent such that it was difficult to determine what activities and procedures were authorized by way of the permit. Also, some final applications included take tables that were missing information or that included inaccurate and inconsistent information.

<sup>10</sup> e.g., permits 25770 for Dr. Costa, 25786 for SWFSC, and 22187 for Dr. Heather Liwanag.

<sup>11</sup> ADFG indicated in its application that even though it was previously permitted for this activity and has built such a trap, "deployment conditions have not been ideal and other capture methods have been successful".

<sup>12</sup> The doors have stops so that they cannot open outward once the seal is inside the net box.

approximately 4 inches of space between the water surface and the slatted trap door—the seal also can breathe through the door itself, because it is slatted. Consistent with its [17 July 2017 letter](#) for ADFG’s previous permit for ice seal research, the Commission has a few remaining? Concerns regarding this novel capture method.

First, when new methods are used, researchers with experience using the methods or procedures generally demonstrate how the methods or procedures should be conducted safely. In this case, these would be Russian researchers. Second, an excerpt from a Russian paper<sup>13</sup> describing the floating trap indicated that a seal may be able to swim freely in the net box for an extended period of time without any harmful consequences. However, the excerpt also indicated that a seal could become entangled in the net and die due to the seal’s strong behavioral response to being trapped in the net box, the thinness of the net material being used, an anchor failing, or a break in the bottom of the net box. Although ADFG is unaware of any seal death attributed to use of the floating trap in Russia, the excerpt clearly indicates the potential exists. Third, ADFG stated that the presence of a vessel near the trap would decrease the chances that a seal would haul out on the platform. Thus, it planned to leave the floating traps unattended for a few hours and up to 8 hours at a time. Given that ADFG has yet to use and gain experience with such traps, it is premature to propose leaving them unattended for any significant time period. The Commission therefore recommends that NMFS condition the permit to require ADFG to monitor the floating traps from a distance using binoculars or a spotting scope and extract any seal from the trap immediately. The Commission further recommends that NMFS condition the permit to require ADFG to (1) consult with NMFS and the Commission if one seal of any species dies either in the floating trap or after being caught in the floating trap<sup>14</sup> to determine the appropriate mitigation measures that should be employed to minimize further mortalities and (2) if two seals of any species die, cease use of the floating trap until its faults are assessed and remedied—NMFS and the Commission should be consulted at this stage as well.

### **Remotely-delivered sedation**

The Commission has some ongoing concerns regarding darting marine mammals, including bearded seals. ADFG indicated that a veterinarian would be present when remotely-delivered sedation is used until the drug combination and technique have been shown to be safe and the veterinarian is no longer needed<sup>15</sup>. Although ADFG was authorized to conduct darting of bearded seals under permit 20466, it has yet to remotely sedate a seal due to the animals being wary of boats and flushing into the water before the researchers are in range to deploy the dart. Since darting has inherent risks, the Commission continues to believe that NMFS should take a precautionary approach, as it has with authorizing darting activities under ADFG’s previous permit and other bearded seal permits. Therefore, the Commission recommends that NMFS condition the permit to require ADFG to monitor bearded seals that have been darted and report on (1) their behavioral response and any activities that place them at heightened risk of injury or death and (2) whether they entered the water and their fate could not be determined. The Commission further recommends that NMFS condition the permit to require ADFG to halt the use of the darting technique and consult

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<sup>13</sup> Translated from Russian.

<sup>14</sup> Including if it is seriously injured or is stressed and then dies.

<sup>15</sup> The veterinarian also would supervise the co-investigators until they have sufficient experience to administer remotely-delivered sedation unsupervised.

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with NMFS and the Commission if three or more bearded seals are darted and suffer unanticipated adverse effects, including entering the water and either drowning or disappearing so that their fate cannot be determined.

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 a distinct "O" in the middle name.

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