



MARINE MAMMAL COMMISSION

16 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. 26375
(Jay Rotella, Ph.D.,
Montana State University)

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). Dr. Rotella proposes to conduct research on pinnipeds in Antarctica during a five-year period—permit 21158¹ authorized similar activities.

Dr. Rotella proposes to conduct research on Weddell seals primarily from October through December of each year. The purpose of the research is to evaluate how temporal variation in the marine environment affects individual life histories and population dynamics of Weddell seals. Researchers would harass, observe, photograph/videotape, restrain, weigh, sample, and mark/tag, numerous Weddell seals of either sex and all age classes (see the take table and application for specifics). Crabeater and leopard seals could be harassed incidental to the proposed activities. Dr. Rotella also requested authorization to import and export samples. Researchers would employ various measures to minimize impacts on non-target pinnipeds and also would be required to abide by the National Marine Fisheries Service's (NMFS) standard permit conditions. The Commission understands that Dr. Rotella would revise his proposed research protocols for review by the Montana State University Institutional Animal Care and Use Committee and that approval would be obtained before the proposed activities begin.

On 24 February 2022, NMFS published Dr. Rotella's application in the *Federal Register* (87 Fed. 10341) 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 clear in the application. 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. The Commission did not receive a revised, final application based on the

¹ Issued to Dr. Robert Garrott.

relevant responses. In addition, a few of the responses did not sufficiently address the Commission's initial concerns.

For example, the Commission had informally inquired why mortality takes, including euthanasia for humaneness purposes, had not been requested under the permit, particularly when one pup and one adult Weddell seal mortality had been requested under the previous permit for nearly the same activities. The Commission had further inquired what steps would be taken to deal with a dependent pup if a female died during the course of research activities, including how the pup would be assessed to determine whether it would need to be euthanized. In response, Dr. Rotella indicated that he had "added the suggested text [to the application], which also addresses (sic) we would assess whether a dependent pup would need to be euthanized if its mother died during (sic) due to our research activities. I have added text to the details of lines 8-9 of the takes table regarding euthanasia as well."

In another example, the Commission had informally suggested that Dr. Rotella increase his requested take numbers for flipper-tagging activities involving pups and adult Weddell seals due to continued immigration to the study population in Erebus Bay². In response, Dr. Rotella agreed with the Commission's suggestion and remarked that he had "increased the numbers of pups and adults that will be tagged and/or retagged (flipper tags) such that the numbers will be at least 33% greater for each category than any number we've observed in recent years. Given the rate of increase and the numbers of animals we've observed over the past 10 years, the revised numbers should be adequate unless a large, unexpected increase occurs. I changed all numbers in both the text and in the relevant rows of the table (rows 1, 2, & 4)."

Thus, it appears as though Dr. Rotella has provided responses sufficient to address these concerns and amended the application accordingly. However, due to NMFS's revised permit review process, NMFS no longer makes available complete, corrected applications until a decision on the permit has been made, which means that the Commission has no opportunity to seek additional clarification on responses to its informal comments. Allowing the Commission to provide a few simple, follow-up comments or questions after seeing Dr. Rotella's responses would likely have cleared up these matters. Instead, it is impossible at this stage to ascertain (1) the number of takes that would be requested for mortalities and flipper-tagging activities, (2) the protocols for assessing a dependent pup's ability to survive if its mother is killed incidentally to research activities, and (3) if required, the methods for administering euthanasia, including who would conduct it. Since some of the information in the initial application remains inconsistent or unclear, the Commission considers the application incomplete. Neither the Commission nor the public can provide informed comments until the application has been updated based on responses to the Commission's comments and questions³. Therefore, the Commission recommends that NMFS refrain from issuing a permit to

² The requested take numbers were identical to those authorized under the previous permit issued to Dr. Garrott in 2017 for nearly the same activities. Dr. Garrott had sought an amendment to that permit to increase his take numbers for flipper-tagging pups due to high pup productivity during his first field season, which NMFS processed under the MMPA's "emergency" permit provision (section 104(c)(3)(A)) to expedite the authorization. The Commission discussed in its [15 November 2017 letter](#) for Dr. Garrott's amendment request the misuse of this emergency provision by NMFS and the importance of researchers accounting for some measure of variability in their numbers of requested takes.

³ For discussion on the potential implications of the issuance of a permit based on inaccurate or inconsistent information in the final application, see the Commission's [26 June 2021 letter](#) for Dr. Terrie Williams, its [31 July 2020](#)

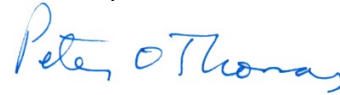
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Dr. Rotella until NMFS (1) revises the final application based on responses specifically relevant to the Commission's comments and questions, and (2) provides the final application for review and comment.

Even though the applicant indicated in his responses that the final application and take tables would be amended according to the Commission's comments and questions, the Commission notes that NMFS continues to *not* revise some final permits and applications based on relevant responses to the Commission's informal comments on applications⁴. If NMFS decides to issue a permit to Dr. Rotella, 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.

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

Sincerely,



Peter O. Thomas, Ph.D.
Executive Director

cc: Dr. Polly Penhale, NSF

[letter](#) for Dr. Dan Costa, its [14 July 2020 letter](#) for U.S. Geological Survey, its [17 June 2020 letter](#) for Hamilton James, and its [16 June 2020 letter](#) for Wild Space Productions.

⁴ e.g., permits 25770 for Dr. Costa, 25786 for Southwest Fisheries Science Center, and 22187 for Dr. Heather Liwanag.