



# MARINE MAMMAL COMMISSION

11 May 2022

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. 57198B  
(Alaska Department of Fish and Game)

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).

Alaska Department of Fish and Game (ADFG) is seeking to renew its permit to conduct research on Pacific walruses in Alaska during a five-year period. Researchers would harass, observe, photograph/videotape<sup>1</sup>, sample<sup>2</sup>, and instrument<sup>3</sup> individuals of any age class and either sex (see the take table for specifics). 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 walruses. ADFG would implement various measures to minimize impacts on walruses and also would be required to abide by the U.S Fish and Wildlife Service's (FWS) standard permit conditions. ADFG's Institutional Animal Care and Use Committee has reviewed and approved the research protocols.

In its informal review of ADFG's application, the Commission noted that some of the information required in FWS's 2020 application instructions and its implementing regulations was missing or unclear. For example, ADFG proposed to tag walruses younger than six years old, which have a thinner combined blubber and skin layer than older animals that makes them more susceptible to injury from the harpoon of the tag. ADFG had only been authorized previously to tag walruses older than six. The Commission requested that FWS ask the applicant to address the noted shortcomings and questions and submit a revised application that incorporated responses to the Commission's concerns.

The Commission received responses to only some of its comments, along with the original unchanged application. FWS informed the Commission that it had not provided all of the

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

<sup>2</sup> Including remotely-collected skin and blubber samples using a crossbow.

<sup>3</sup> With remotely-deployed satellite-linked radio tags.

Commission's comments and questions to ADFG, and explained that "Questions [from the Commission] were excluded if it was determined they were answered in the applicant's responses, were not required of the applicant based on the text of the application, or were previously conditioned in the previous version of the permit and no change was requested by the applicant." The Commission disagrees with this reasoning and contends that critical pieces of information, which are essential to review by the public or the Commission and which ADFG could have likely easily provided, are still missing from the application.

As stated in previous Commission letters<sup>4</sup>, 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., 2020) 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 to the Commission.

Moreover, FWS did not ask ADFG to revise the application to make it consistent with changes that arose during the Commission's review and ADFG's response. Instead, FWS simply included responses from ADFG in supplementary documents which were appended to the original application<sup>5</sup>. Consequently, the supplemental documentation often contradicts information in the application. Since the application itself ultimately underpins the actual permit issued, an application plus supplementary material that contains inaccurate, inconsistent, or unclear information lacks clarity regarding what the agency actually intended for the permit to approve. This lack of clarity on what is approved puts the permit holder at risk of unintentionally violating the permit. 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 the applicant's responses to the application requirements.

### **General outstanding issues**

Although a few of the responses received from FWS regarding ADFG's original application addressed the Commission's initial concerns, the application will remain technically incomplete until the application is appropriately revised. More critically, basic information required in FWS's 2020 application instructions regarding the humaneness of ADFG's proposed activities is lacking in the application, and numerous deficiencies and inconsistencies still exist. Some of the remaining issues with ADFG's application concerning the humaneness criteria of the MMPA include its failure to (1) specify consistently the minimum age of a walrus that would be targeted for biopsy sampling and

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<sup>4</sup> See its [27 March 2019 letter for Florida Fish and Wildlife Conservation Commission](#), [18 December 2018 letter for U.S. Geological Survey](#), and [18 December 2018 letter for Dr. Karyn Rode](#).

<sup>5</sup> In an email to the Commission, FWS indicated that "applicants are not required to re-submit revised applications if additional information or clarification is required."

tagging<sup>6</sup>, (2) specify consistently the number of requested mortality takes, either unintentional or intentional (i.e., euthanasia for humaneness purposes)<sup>7</sup>, (3) indicate whether harpoons and darts would be sterilized using standard methods, (4) clearly indicate during which activities female-calf pairs would be targeted and sufficiently describe how impacts on those pairs would be minimized, including how researchers would avoid separating a mother and pup pair, and (5) specify which personnel would be authorized to conduct tagging and biopsy sampling under the permit.

It also remains unclear whether ADFG's proposed activities constitute *bona fide* research under the MMPA. ADFG requested to biopsy sample up to 2,000 walrus in a year to augment a mark-recapture study led by FWS's Marine Mammals Management (MMM) to estimate the population size and demographic parameters of walrus. As discussed in its [18 March 2021](#) and [18 July 2011 letters](#) on MMM's walrus permits, the Commission remains concerned about the statistical soundness of the mark-recapture methodology and its untested assumptions. Specifically, the Commission continues to question how the objectives of the study can be fulfilled with sample sizes proposed in permit applications (i.e., ADFG's request for up to 2,000 biopsies), which are insufficient when compared to the required sizes<sup>8</sup>. Thus, since MMM's mark-recapture study may not constitute *bona fide* research, and ADFG's proposed research is intended to support the study, ADFG's activities may not constitute *bona fide* research either.

This concern is compounded by the fact that ADFG may not prioritize or have sufficient resources to carry out its proposed research activities on walrus. Based on annual reports for ADFG's previous permit, it appears the agency has not conducted any field research activities on walrus since 2014. The current application does not address this 8-year lapse in research activities, or provide assurance that activities will resume under the requested permit. Furthermore, MMM collected only approximately 2,000 samples each year from 2013 through 2017<sup>9</sup> and expects to collect only between 1,500 and 3,000 samples per year under its current permit. The mark-recapture study is founded on the premise that a certain number of walrus biopsies will be collected each year across sex and age classes, and if agencies such as ADFG are unable to participate in the work, the Commission feels that ADFG's proposed activities may not meet the *bona fide* criteria for research under the MMPA for this reason as well.

Based on the remaining deficiencies in ADFG's application, the Commission recommends that FWS refrain from issuing a permit to ADFG until (1) responses provided in supplementary documentation are incorporated into the final application, (2) inconsistencies between supplementary documentation and the final application are rectified, (3) all outstanding questions from FWS's 2020 application instructions are addressed and the information is incorporated into the

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<sup>6</sup> The application indicated that ADFG would biopsy sample and tag individuals younger than one and older than three years of age, respectively, but ADFG's response to the Commission's informal comments indicated that it would only biopsy sample and tag individuals older than one and six, respectively.

<sup>7</sup> The application did not specify any mortality takes, while ADFG's response to the Commission's informal comments indicated that "it is possible that two unintentional deaths or two intentional (via euthanasia) deaths could occur each year of research."

<sup>8</sup> In MMM's 2011 application for permit MA09386, it indicated that it required 6,000 walrus biopsies per year (i.e., 3% of the estimated population of 200,000 animals). In its 2017 application for permit 14537C, it indicated that around 5,000 walrus biopsies would be required annually (i.e., 1% of the re-estimated population size of 500,000). MMM did not explain in the more recent application why a reduced percentage would be sufficient to give the statistical power for a robust estimate of population size.

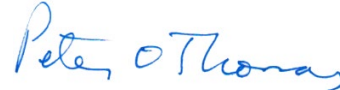
<sup>9</sup> MMM did not collect biopsies from walrus from 2018 through 2020.

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final application, and (4) FWS ultimately determines whether the *bona fide* and humaneness criteria are met under section 104 of the MMPA.

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,

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" for the middle name.

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