



# MARINE MAMMAL COMMISSION

29 September 2023

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. 27361  
(Brent Stewart, Ph.D.,  
Brent S. Stewart Associates)

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). Dr. Stewart proposes to conduct research on pinnipeds in California during a five-year period—permit 21018 authorized the same activities.

Dr. Stewart proposes to conduct research on harbor seals, northern elephant seals, and California sea lions year-round throughout southern California, including the Channel Islands and mainland California. The objectives are to investigate (1) abundance, (2) survival and reproductive success, (3) demography, (4) community ecology, (5) foraging patterns, (6) habitat use, (7) disease/health, and (8) phenology of the three pinniped species. Dr. Stewart would harass, capture, handle, restrain, administer drugs to, measure, weigh, mark/tag, sample<sup>1</sup>, and attach instruments to individuals of the three pinniped species (see the take tables in the application). He also would conduct aerial and ground-based surveys.

As discussed in the Commission's [24 July 2017 letter](#) and similar to Dr. Stewart's previous permit application, the current application is not substantively different from the version that the Commission reviewed in 2011 despite multiple changes in and requirements of the National Marine Fisheries Service's (NMFS) applicable application instructions, the newest of which was revised in 2021<sup>2</sup>. Dr. Stewart also did not provide the necessary expertise information required in a qualification form (QF) or complete QFs for himself or his co-investigator. NMFS specifically states both in its application instructions and on its website that applications will be returned to applicants, if he/she does not follow the instructions. NMFS further states that if an applicant does not address

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<sup>1</sup> Including blood, blubber, hair, skin, swabs, urine, feces, and spew.

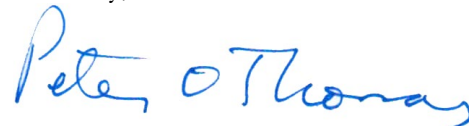
<sup>2</sup> NMFS made the application instructions available on its website in 2023.

all of the agency's questions within 60 days, it will withdraw the application<sup>3</sup>. Due to these ongoing issues and the fact that all applicants must be held to the same standard, the Commission recommends that NMFS return the application to Dr. Stewart and, if Dr. Stewart fails to resubmit a complete application or correct the deficiencies within 60 days, withdraw the application.

In addition to missing and outdated information in the current application, Dr. Stewart has again estimated the numbers of proposed Level B harassment takes based on animals exhibiting alerting behavior rather than NMFS's specified criteria for enumerating takes of hauled-out pinnipeds<sup>4</sup>. The agency decides what constitutes taking under the MMPA, and applicants must abide by NMFS's guidance. Even with enumerating Level B harassment takes based on alerting behavior, the actual take numbers provided in Dr. Stewart's annual reports from 2017–2022 were much lower than the numbers authorized<sup>5</sup>. For example, 117 elephant seals were reported to be taken by Level B harassment of the 3,675 authorized to be taken in 2017/18, before the COVID-19 pandemic affected research activities. NMFS specifies in its application instructions that the numbers of takes should be realistic based on the researcher's future plans and previous experience and that the reported takes from previous annual reports will be compared to those proposed in new applications. The Commission continues to believe that NMFS should authorize fewer numbers of takes for the proposed activities. As such, the Commission recommends that, before any permit is issued, either NMFS or the applicant recalculate the estimated numbers of takes based on the agency's current interpretation of Level B harassment for hauled-out pinnipeds, Dr. Stewart's realistic future research plans, and the reported takes from his previous annual reports.

Kindly contact me if you have any questions concerning the Commission's recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive, flowing style.

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

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<sup>3</sup> This is consistent with NMFS's implementing regulations that specify incomplete applications will be returned with an explanation. If the applicant fails to resubmit a complete application or correct the identified deficiencies within 60 days, the application will be deemed withdrawn (50 C.F.R. § 216.33(c)(4)).

<sup>4</sup> Movements of twice the animal's body length or more, changes of direction greater than 90 degrees, or retreats (flushes) to the water.

<sup>5</sup> Including for invasive procedures as well. Over the five-year permit, Dr. Stewart conducted invasive procedures on less than 1 percent of the elephant seals authorized to be taken (64 reported of 9,000 authorized takes).