



**NOAA
FISHERIES**

**Office of Protected
Resources**

U.S. Permitting Legal Context for Tagging Endangered Large Whales

North Atlantic Right Whale (NARW)
Tagging Workshop
Herndon, Virginia

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Permits and Conservation Division
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Overview

- Introduction
- U.S. Laws and Regulations
- Permit Process and Implementation
- NARW Tagging Permits



Who We Are

NOAA Fisheries
(National Marine Fisheries Service)
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ESA and MMPA

Endangered Species Act (ESA)

- Enacted in 1973 to conserve and recover endangered and threatened species and their ecosystems
- Encourages development of “*conservation programs which meet national and international standards*”

Marine Mammal Protection Act (MMPA)

- Enacted in 1972 to conserve and protect marine mammals and their ecosystems
- Encourages “*international arrangements for research on, and conservation of, all marine mammals*”



ESA and MMPA Prohibitions

Prohibit **take**, import, and export

- **ESA take:** to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to do so
- **MMPA take:** to harass, hunt, capture, or kill, or attempt to do so



Credit: Florida Fish and Wildlife Conservation Commission (ESA/MMPA Permit No. 20556-01)



ESA and MMPA Prohibitions

ESA Harass

- Create likelihood of injury by annoying to an extent that **significantly disrupts normal behavioral patterns** which include, but are not limited to, breeding, feeding, or sheltering

ESA Harm

- Actually kills or injures

MMPA Level B Harassment

- Potential to disturb by causing **disruption of behavioral patterns** including but not limited to migration, breathing, nursing, breeding, feeding, or sheltering

MMPA Level A Harassment

- Potential to injure



ESA and MMPA Permits

Exceptions to prohibitions

- The Office Director may issue **ESA Section 10(a)(1)(A)** and **MMPA Section 104 permits** to take endangered large whales for purposes of scientific research or enhancement
- Tagging endangered large whales is primarily authorized under **scientific research permits**



Credit: NOAA Fisheries Marine Mammal Health and Stranding Response Program and Ocean Alliance/Chris Zadra (ESA/MMPA Permit No. 24359)



ESA Permit Issuance Criteria

ESA Section 7 Consultation

- Required for issuance of large whale tagging permits
- Concludes with a biological opinion on whether the proposed action will likely jeopardize the existence of the species or adversely modify designated critical habitat
 - A programmatic biological opinion covers most tagging

ESA Section 10 Permit

- Applicant must apply in good faith
- The activity cannot operate to the disadvantage of the species and must be consistent with purposes and policy of the ESA



MMPA Permit Issuance Criteria

MMPA Section 104

- ***Bona fide research***: scientific research on marine mammals (conducted by qualified researchers), the results of which are
 - likely to be accepted for **publication** in a scientific journal
 - likely to contribute to the basic knowledge of **marine mammal biology or ecology**, or
 - likely to identify, evaluate, or resolve **conservation problems**
- **Humane**: the method which involves the least possible degree of pain and suffering practicable to the animal involved



Regulatory Permit Issuance Criteria

For all marine mammals:

- The proposed activity is **humane** and **does not present unnecessary risks** to the health and welfare of marine mammals
- The proposed activity, by itself or in combination with other activities, **will not likely have a significant adverse impact** on the species
- The applicant's **expertise, facilities, and resources are adequate** to successfully accomplish the objectives and activities stated in the application



Regulatory Permit Issuance Criteria

For endangered marine mammals:

- The proposed research **cannot be accomplished using a non-endangered species**
- The proposed research, by itself or in combination with other activities, **will not likely have a long-term direct or indirect adverse impact** on the species



Credit: NOAA Fisheries Southeast Fisheries Science Center (ESA/MMPA Permit No. 779-1633)

Regulatory Permit Issuance Criteria

For endangered marine mammals, the proposed research will either:

- Contribute to fulfilling a research need or objective in a **recovery plan**
- Contribute **significantly** to understanding **basic biology or ecology** of the species
- Contribute **significantly** to identifying, evaluating, or resolving **conservation problems**, or
- Contribute **significantly** to fulfilling a **critically important research need**

RECOVERY PLAN FOR THE
NORTH ATLANTIC RIGHT WHALE
(*EUBALAENA GLACIALIS*)
REVISION



Original Version: December 1991
Revisions: July 2001, August 2004

Prepared:
The Office of Protected Resources
National Marine Fisheries Service



Other Applicable Laws

Additional laws and regulations may apply

- **Animal Welfare Act**
 - For “research facilities” that receive federal funding; requires Institutional Animal Care and Use Committee (IACUC) approval
- **Federal Aviation Administration Regulations**
 - For use of drones for tagging
- **National Environmental Policy Act**
 - For issuance of ESA/MMPA permits
- **National Marine Sanctuaries Act**
 - For flying drones and discharging tags within a national marine sanctuary



Permit Application Process

Typically 6 – 12 months

Application submitted and reviewed

Application available for public comment and sent to experts/agencies

Comments addressed and supporting analyses drafted

Decision to issue or deny permit submitted to Office Director

NEPA analysis and ESA Section 7 consultation



Permit Applications Available via APPS

<https://apps.nmfs.noaa.gov>



Authorizations and Permits for Protected Species (APPS)



[Log On](#)

Home
Online Application Instructions (pdf)
Pre-Application Guide
Permit Types
Laws and Regulations
Species Lists
Search Database
Records Open for Public Comment
When To Apply
Contact Us

Welcome

This online application system for Authorizations and Permits for Protected Species (APPS) covers

- NOAA Fisheries permits and authorizations for [Federally protected species](#) under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA)
- Oregon state scientific taking permits and rescue/salvage authorizations

Please note:

- This site does not cover fishing permits and licenses.
- You may need additional Federal, state, or local permits not offered on this web site.

For more information, click on [Permit Types](#) or contact your area's applicable fish and wildlife agency.

If you are new to APPS, please see the [Online Application Instructions](#) for information about how to use APPS to apply for a permit or authorization. A link can be found on the left menu bar on most pages.

Already have an account or need to create a new account?

Want to find out if you need a permit?

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Permit Requirements

Coordination

- To avoid duplication of efforts and repeated harassment or other adverse impacts from multiple permit holders, researchers must:
 - **Notify** the NMFS Regional Office **2 weeks in advance** of fieldwork and follow Regional recommendations
 - **Coordinate** with other permit holders



*Credit: NOAA Fisheries Northeast Fisheries Science Center
(ESA/MMPA Permit No. 21371)*



Permit Requirements

Reporting

- **Annual Reports:** # takes, summary of research completed and preliminary findings, impacts to species, research coordination, problems encountered, and specific information about invasive tagging
 - Successful/unsuccessful deployments, post-tag monitoring
- **Incident Reports:** Exceeding take limits, serious injury or mortality
- Information is used to **monitor permit compliance** and the **impacts** of authorized activities
- NMFS may **modify**, revoke, or suspend a permit under certain conditions



NARW Permits

Number of permits and tagging takes

- 5 permits authorize NARW tagging
 - 4 permits with dart and suction-cup tags
 - 1 permit with suction-cup tags only
- Of those permits, the following is authorized annually
 - 60 dart tags total
 - No more than one tag per animal per year
 - 225 suction-cup tags
 - Includes up to three suction cup tags per animal per year (i.e., not 225 animals)



NARW Permits

Dart tagging restrictions

- Tags cannot penetrate **deeper than blubber** layer
- Tagging is not authorized
 - On **reproductive age females**
 - On **calves less than 6 months** of age
 - On animals in **poor health or compromised**
 - E.g., noticeable reductions in body mass; prominent vertebrae or ribs; excessive lesions, parasites, or cyamids; abnormal behavior

Required mitigation

- Researchers must take reasonable measures to identify an individual prior to tagging
- All darts/tag anchors must be **sterile** before use
 - Must cease tagging if tag or anchors are contaminated



NARW Permits

Additional Requirements

- Researchers must
 - **Report dart tagging within 24 hours** to the Permits Division and the Marine Mammal Health and Stranding Response Program to assist in monitoring the population and the Unusual Mortality Event
 - Date, location of tag on body, ID of animal, and photographs
 - **Conduct follow up monitoring** and report findings
 - Tag wound reaction, healing, tag breakage, animal health and behavior, fecundity, survival



Thank you

Merci

