

## MARINE MAMMAL COMMISSION

Plan for Agency Operations in the Absence of Appropriations  
15 February 2018

Congress passed the Marine Mammal Protection Act of 1972 to maintain the health and stability of marine ecosystems and to prevent marine mammal stocks from diminishing beyond the point at which they cease to be significant, functioning elements of those ecosystems. Title II of the Act created the Marine Mammal Commission as an independent agency of the Executive Branch and charged the Commission with reviewing the domestic and international programs and policies of federal agencies as they pertain to marine mammals. To meet the objectives of the Marine Mammal Protection Act, the Commission works with federal, state, and local agencies; international, tribal and non-governmental organizations; industry; and the public.

The Marine Mammal Commission consists of three members appointed by the President subject to Senate confirmation. The Commission is assisted in its work by a nine-member Committee of Scientific Advisors on Marine Mammals. The Commission also consists of an Executive Director and a professional staff with scientific, policy, legal, budgetary, and administrative duties and expertise.

When appropriations lapse and the government shuts down, agencies are allowed to perform only operations necessary for the safety of human life and the protection of property. Otherwise, all authority to spend terminates. In such a situation, the Office of Management and Budget provides guidance regarding when and how to initiate shutdown procedures.

The Commission's mission generally does not impact the safety of human life or the protection of property. However, exigent matters involving marine mammals, such as unusual mortality events, may arise that can pose a risk to human health and safety or to property<sup>1</sup>. In such cases, action by the Commission may be warranted despite the government shutdown. All other Commission activities will cease during a lapse in appropriations. It is anticipated that it will take ½ day to complete shutdown activities.

The Commissioners, who are Presidential appointees subject to Senate confirmation, serve as special government employees and are compensated on an hourly basis. Thus, they are not automatically exempt from the furlough requirements. Because the Commission does not routinely address matters that involve threats to human health or safety or that pose a risk to property, the Commissioners would not remain on duty during a shutdown. However, should a situation arise that

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<sup>1</sup> Such issue might include, for example, a large stranding of marine mammals that pose a health risk to people in a particular coastal area. Those cases are expected to be highly unusual.

involves marine mammals and threatens human health and safety or property, the Commissioners would be called-back to oversee those issues. In such a case, the Commissioners would confine their work to exigent matters involving risks to public health or safety or to property. The Committee of Scientific Advisors on Marine Mammals is subject to the Federal Advisory Committee Act and, subject to guidance provided by the Committee Management Secretariat of the General Services Administration, all Committee activities would cease in the event of a shutdown.

There are expected to be 14 full time agency employees on the staff at the time this plan would be implemented. The Executive Director has been identified as a conditionally excepted employee for the limited purposes of monitoring telephone (including government-issued mobile devices), email, and other communications with the Commission, in order to identify and advise the Commissioners of possible emergency situations that would warrant a call-back of the Commissioners or staff or for purposes of communicating with the Office of Management and Budget (OMB) and the Office of Personnel Management (OPM) about the status of agency activities during a shutdown. The General Counsel and Administrative Officer are conditionally excepted employees for the limited purpose of monitoring telephone (including government-issued mobile devices), and email for the purposes of communicating with OMB, OPM, and other government offices and with the Executive Director on issues related to the shut down. No other employees will be retained under the plan in any of the categories listed in Section 124 of Circular A-11. The Executive Director also will come to the Commission's office as needed to ensure that the Commission's office space, computer equipment, and mail are secured. The Executive Director will not read or review the mail while the government is shut down, except as it may pertain to emergency situations. As a general matter, during a government-wide shutdown, all other staff will be placed in a furlough status. Nevertheless, the Commission retains the flexibility to recall staff members if necessary to respond to matters that place human health, safety, or property in jeopardy.

Except as provided above, during a shutdown the Commissioners, members of the Committee of Scientific Advisors on Marine Mammals, and staff are not allowed to enter the office, telecommute, obligate funds, work on Commission business, or use Commission equipment (computers, telephones, etc.). In short, all work must stop until further notice.

The Executive Director has determined that the official website of the Marine Mammal Commission must continue to be operational during a lapse in appropriations. Official government mobile telephone service must continue, although official government devices will only be used by the Executive Director and the General Counsel.

The Office of Management and Budget will announce when the government is open and will provide directions on administrative matters pertaining to salary, time keeping, and benefits.

The Executive Director will inform members of the Commission, Committee, and staff when the budget issue is resolved and when to report back to the office. The following flexibilities

are available to supervisors if employees have problems returning to work on the day specified: use of accrued annual leave, advanced annual leave, and compensatory time off.

The Marine Mammal Commission does not anticipate any problems in restarting Information Technology Systems or in resuming program activities, including grants and contracts.