

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 06/23/2010

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 09/03/2009

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200908-0648-007
AGENCY ICR TRACKING NUMBER:
TITLE: Basic Requirements for Special Exemption Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0084
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 06/30/2013 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	993	6,728	2,000
New	939	7,716	2,000
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	-54	988	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE: In accordance with 5 CFR 1320, the information collection is approved for 3 years.

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Permit and Authorization Applications			50 CFR 216 Subpart D
Amendments to existing permits and authorizations			
Reports to existing permits and authorizations and for public display inventory	NA, NOAA 89-880	Marine mammal data sheet, Person/Holder Facility Sheet	
Recordkeeping associated with Reports to existing permits and authorizations and for public display inventory			50 CFR 216.38
Retain or transfer rehabilitated animals			50 CFR 216.38

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
7. Title	
8. Agency form number(s) (<i>if applicable</i>)	
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. <input type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input type="checkbox"/> Business or other for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. <input type="checkbox"/> Application for benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input type="checkbox"/> Regulatory or compliance d. <input type="checkbox"/> Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

SUPPORTING STATEMENT
BASIC REQUIREMENTS FOR SPECIAL EXCEPTION PERMITS AND
AUTHORIZATIONS TO TAKE, IMPORT AND EXPORT MARINE MAMMALS, AND
ENDANGERED AND THREATENED SPECIES, AND FOR MAINTAINING A CAPTIVE
MARINE MAMMAL INVENTORY UNDER THE MARINE MAMMAL PROTECTION
ACT, THE FUR SEAL ACT, AND THE ENDANGERED SPECIES ACT
OMB CONTROL NO. 0648-0084

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

The National Marine Fisheries Service (NMFS), Office of Protected Resources Permits, Conservation and Education Division (Permits Division) has the responsibility for processing permits for taking marine mammals under the Marine Mammal Protection Act and endangered and threatened species under the Endangered Species Act. This information collection applies to protected species for which NMFS is responsible, including the marine mammal species of cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions); and threatened and endangered species including sea turtles (in water), white abalone, smalltooth sawfish, and shortnose sturgeon. This information collection excludes permits for taking salmonids and other Pacific fish species, which are processed in the NMFS Regional Offices under Office of Management and Budget (OMB) Control No. 0648-0402 and 0648-0399.

Information in this information collection represents an extension of a currently approved collection, with minor clarifications.

This information collection includes the following: (1) application instructions for scientific research and enhancement permits; (2) letters of intent for the General Authorization for Scientific Research Studies; (3) photography permit guidelines; (4) application instructions for public display permits; and (5) marine mammal public display inventory reports (Mammal Transfer/Transport Notification, Marine Mammal Data Sheet, Marine, and Person/Holder/Facility Sheet). The collection instruments with justification of the information collection requirements for each instrument are included.

The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; MMPA), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; ESA), and the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*; FSA), hereafter referenced collectively as "the Acts," mandate the protection and conservation and prohibit the taking, importation, and export of marine mammal and endangered and threatened species or their parts or products except under certain limited circumstances. Exemptions for scientific research, enhancement, educational or commercial photography, public display, and certain other limited purposes are allowed, provided permits are applied for and received or other necessary authorizations obtained.

The Marine Mammal Protection Act (MMPA) - Section 101(a)(1) of the MMPA states: "...consistent with the provisions of section 104, permits may be issued by the Secretary for taking and importation for purposes of scientific research, public display or enhancing the survival or recovery of a species or stock...". Section 104(b) requires that "Any permit issued under this section shall (1) be consistent with any applicable regulation established by the Secretary...and (2)

specify (A) the number and kind of animals which are authorized to be taken or imported, (B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported, (C) the period during which the permit is valid, and (D) any other terms or conditions which the Secretary deems appropriate." Section 104(c) states: "Any permit...shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed..." And finally: "Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority."

Under section 104(c)(3)(C) of the MMPA, as amended, persons may be authorized to take marine mammals in the wild by Level B harassment, defined in 50 CFR 216.3 as "any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild", for purposes of *bona fide* scientific research. Interested persons must submit a letter of intent in accordance with the interim final rule published on October 3, 1994 and submit certain information outlined at 50 CFR 216.45(b) under the General Authorization. Under section 104(c)(6) of the MMPA, a permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild and that does not exceed Level B harassment. Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed but applicants are currently provided with interim guidance for photography permit applications, included in this package. This guidance is similar to that required for the General Authorization since the type of takes and level of harassment authorized under these are similar in nature.

Section 104(c)(8) of the MMPA eliminates the need for a permit or additional authorization to possess, sell, purchase, transport, or export captive marine mammals, or their progeny, for public display purposes, provided the recipient and holder meet applicable criteria. However, a 15-day advance notification is required prior to the transport, transfer, sale, or other disposition of captive marine mammals. Further, Section 104(c)(10) of the MMPA, as amended, directs the Secretary to establish and maintain an inventory of captive marine mammals consisting only of the information specified in Section 104(c)(10)(A-H). In addition to the Section 104 provisions, Section 402(b) states that the Secretary shall "...collect and update, periodically, existing information on..." marine mammal rehabilitation procedures and practices. Permits are required for captures from the wild, first time imports, and for retaining a releasable stranded animal for purposes of public display. Provisions implementing specific requirements for public display permits, previously codified at 50 CFR 216.39, have not been finalized; these permits continue to be processed in accordance with 50 CFR 216.33.

The regulations at 50 CFR part 216, subpart D [published May 10, 1996 (61 FR 21926)] consolidate permitting and authorization requirements under the MMPA for marine mammals. The ESA regulations at 50 CFR 222.308 specify that "Permits for marine mammals shall be issued in accordance with part 216, subpart D of this chapter." The regulations at 50 CFR 216 provide procedures for the disposition of rehabilitated stranded marine mammals under special exception permits, marine mammal research and enhancement permits (including ESA-listed

marine mammals), disposition of marine mammal parts, letters of intent under the General Authorization, and reporting requirements.

The Fur Seal Act of 1966 (FSA) - Section 104 of the FSA, as amended in 1983, provides for the Secretary to conduct research on fur seal resources of the North Pacific and to permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes. Since northern fur seals are also marine mammals, to avoid duplication, applications for permits for scientific research are also processed under the MMPA regulations of part 216, subpart D (59 FR 50372, October 3, 1994).

The Endangered Species Act (ESA) - Section 9 of the ESA prohibits, except under permit, importation, taking, possessing or selling any endangered species of fish or wildlife. In accordance with section 10(a)(1)(A) the Secretary may permit, under such terms and conditions as he/she may prescribe, taking of listed species for scientific purposes or to enhance the propagation or survival of the affected species. A final rule published in the *Federal Register* in May 1996 revised 50 CFR 222.307(b) permit application procedures so that marine mammal permits would be issued in accordance with the provisions of 50 CFR part 216, subpart D, as mentioned above. The regulations implementing the authority to issue permits for scientific research or enhancement for other ESA-listed species are found at 50 CFR 222. The regulations contain information collections for applications for scientific research and enhancement permits and reporting requirements for permits. When endangered species are involved, the Permits Division is required to consult with the NMFS Endangered Species Division under section 7 of the ESA to determine whether the permitted activities may jeopardize the continued existence of ESA-listed species. The revised scientific research and enhancement permit application instructions provide clarification of information required for such consultations in hopes to eliminate the need to ask applicants for additional information during the consultation process and reduce the overall processing time for permits involving ESA-listed species.

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) – Issuance of a permit is considered a major federal action, which is subject to NEPA. While issuance of Letters of Confirmation to work under the General Authorization and some scientific research permits may be categorically excluded from the requirements to prepare extensive environmental analyses, under certain circumstances (e.g., if a threatened or endangered species is involved; if the activity is highly controversial; if the effects of the activity are unknown) preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) may be necessary. If an application does not contain sufficient information on the environmental impact of the proposed activity to determine whether an EA or EIS is necessary, or if the information is insufficient to complete such analyses, the application may be returned or processing may be delayed. An EA/EIS must consider the potential environmental impacts of the proposed research using the description of the activities provided in the application and the best available information on the effects of such activities. The scientific research and enhancement permit application instructions have updated the existing questions pertaining to NEPA to facilitate complete applications and reduce the processing time for permits requiring more extensive NEPA analyses.

Summary – An applicant who wishes to obtain an exemption to the take prohibitions of the Acts must provide justification as to why NMFS should grant them the permit or Letter of

Confirmation under the General Authorization consistent with the provisions of the Acts and implementing regulations. NMFS needs the information provided in the application in order to make an informed decision as to whether to grant or deny the permit or Letter of Confirmation under the General Authorization and whether the taking, import, export, or release disposition is necessary, humane, will not operate to the disadvantage of the species, is in the best interest of both protected species and the public at large, among other things, and is consistent with the purposes and policies of the Acts and implementing regulations. Taking of a protected species without a permit or Letter of Confirmation under the General Authorization, is subject to prosecution as a violation of the Acts. Public display inventory reports allow NMFS to meet a Congressional mandate and make information available to the general public regarding marine mammals in captivity, which are considered a public trust resource.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The Director, Office of Protected Resources, NMFS will use the information to determine that the proposed taking, importation, or export meets the goals and objectives of the Acts and regulations and as a basis for a decision on issuance or denial of permits and authorizations. If certain information required by the Acts is not provided, NMFS cannot complete a review of the application and the application processing is suspended. For marine mammals, the MMPA requires that the Marine Mammal Commission review all permit applications. Taking, importing, or exporting without a permit or authorization is a violation of the Acts and subject to prosecution.

The information in applications for scientific research and enhancement permits, including the General Authorization for Scientific Research, is submitted and reviewed one time only unless the submission is inadequate, in which case the application is returned. Unless an amendment of the permit is necessary, the applicant need not submit new information. As permits are valid for up to 5 years, less frequent collection of information is not appropriate for these applications. Holders of marine mammals on public display submit reports when they wish to transport or relinquish custody of animals, export animals, and when an animal gives birth or dies in captivity. They must also provide 15 day notification of transfers and transports, and 30 day notification of births and deaths. The marine mammal inventory reports are mandated by Congress and are used to keep track of the captive marine mammals in public display facilities. The reports required annually by the MMPA permits (50 CFR 216.38 of the regulations and §104(c)(1) of the MMPA) are used by NMFS to ensure that the terms and conditions of the permit are being complied with, to evaluate the potential impacts of research activities on marine mammals, and to coordinate permit activities to ensure that unnecessarily duplicative and potentially cumulative harassments are kept to a minimum. The reports required by the ESA permits (50 CFR 222.308(d)(5)) and section 10(a)(2)(C)) are also used by NMFS to ensure that the terms and conditions of the permit are being complied with and that the taking of the affected species is not appreciably reducing the likelihood of the survival and recovery of the species.

The information collected is available to the public under the Freedom of Information Act and on-line through the Authorizations and Permits for Protected Species database. The information may be used to support publicly disseminated information. As explained in the preceding paragraphs,

the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

All permit and General Authorization applications are available on the internet as Portable Document Format (PDF) or Word documents (at <http://www.nmfs.noaa.gov/pr/permits/>) (all to be fillable PDF forms no later than October 1, 2009) and applications can be emailed, faxed, or mailed to applicants if requested. Applications for scientific research and enhancement permits are now available via an on-line system known as Authorizations and Permits for Protected Species (APPS) found at <https://apps.nmfs.noaa.gov/>. The intent of the APPS on-line system is to provide a user-friendly and efficient electronic format for the public to apply for MMPA/ESA scientific research and enhancement permits for protected species, as an alternative to our currently approved paper application. Eventually the system will be expanded to include the General Authorization, photography, and public display permits. Applicants are able to submit applications and reports electronically via APPS, thus substantially reducing the need to submit paper applications. Applicants therefore can submit paper or electronic permit and authorization application materials and reports depending on their preference. It is required by the regulations [50 CFR 216.33 (a) and 222.308 (b)(13)] that the application be signed, and a signature must be on file (faxed or mailed in).

Paper files are maintained for the Administrative Record in addition to electronic records of application summary information and permit processing information maintained in APPS and on the NMFS Office of Protected Resources shared network. Electronic applications are distributed externally to NMFS and other reviewers during the permit process. During application processing, NMFS corresponds electronically with the applicant as much as possible and automated e-mails are generated by APPS and sent to remind permit holders of when reports are due and when permits expire. As required by regulation (50 CFR 216.33 (d) and 222.303(b)), a summary of each application is published in the *Federal Register* (which is available online on a real-time basis), and from that anyone from the interested public may contact NMFS for the complete application, which can be sent to them electronically. Or, the public can search and view publicly-available permit applications online via APPS.

Public display inventory materials and reports are paper forms that are received primarily by fax, or by mail, and are entered into a DOS-based electronic database (Permit Program Information Management System (PPIMS)). The forms used by public display facilities to report marine mammal inventory changes and transfers and transports of animals will be made available as fillable and printable in the NMFS forms portal by October 1, 2009, where they will be available to the public via the Office of Protected Resources website (<http://www.nmfs.noaa.gov/pr/>) on the internet and can be completed online and printed. Results of these forms will not be made available on the internet and will be entered into PPIMS.

PPIMS generates a Marine Mammal Inventory Report Summary (MMIRS), listing all marine mammals held in public display facilities in the U.S., and for exports, the foreign receiving facilities. The MMIRS report is generally only available in paper form. The MMIRS is frequently requested by the public and made available under the Freedom of Information Act (FOIA). NMFS and a private entity, the International Species Information System (ISIS), have a Cooperative Agreement, and marine mammal inventory information is shared. If funding is secured, a streamlined reporting method will be implemented and when fully operational, this system may be available on the internet to holders of marine mammals on public display and to the general public.

4. Describe efforts to identify duplication.

There is no overlap or duplication for MMPA actions under the ESA or FSA as a single application and permit covers all requirements of these Acts. The Permits Division also includes non-mammal ESA-listed species into the scientific research and enhancement permit application to better streamline processing efforts. As well, in order to avoid duplication with requirements under the ESA for section 7 consultations and requirements under the National Environmental Policy Act for determinations on the effects of proposed activities on the environment, we have clarified information requirements for these statutes so that additional or duplicative information will not be required during the permit process.

NMFS has not identified instances where duplicative information is required for stranded marine mammal placement disposition. This information is coordinated with NMFS Regional Offices as required by regulation (50 CFR 216.27). Some duplication has been identified with the public display inventory, MMIRS, and the private company, ISIS, as mentioned above in #3. However, any duplicative reporting is voluntary on the part of the marine mammal holders, as they are not required to report to ISIS and ISIS is not a federal agency.

NMFS and the U.S. Fish and Wildlife Service (USFWS) share responsibilities under the MMPA and ESA for certain species. If an applicant wishes to work with species under both NMFS and USFWS jurisdiction, a joint permit may be issued. In those cases, the applicant would need to apply to only one agency, and the agencies would coordinate to issue the applicant one permit. Joint permits are considered on a case-by-case basis. For applicants importing or exporting species or parts, two applications may be required, one for the MMPA/ESA permit, and one for the Convention on International Trade of Endangered Species (CITES) of Flora and Fauna. Some duplication is unavoidable because the USFWS issues CITES permits for all CITES-listed plants and wildlife.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

There should not be a significant burden to small businesses or other small entities. The information is submitted one time for each permit, unless the applicant requests a modification or amendment to the permit. Permits are typically issued for up to 5 years to provide continuity in research and avoid the need to apply for a permit each year. Permit reports are required annually, except under special circumstances (e.g., exceeding authorized take). Applicants are requested to provide only that information required by the Acts and implementing regulations. Information

requests for holders of marine mammals on public display are short forms and do not require much time to complete.

Because the majority of permit applicants and holders of marine mammals use computers in the conduct of their research and administration of their public display activities, NMFS has developed APPS, an online application system, to simplify information collection processes as described above in Question 3.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Without a permit application which follows the statutory and regulatory requirements, NMFS cannot legally grant such a permit. If annual permit reports are not submitted, NMFS will not be able to adequately monitor the permit activities and compliance with permit conditions. The information gained from the annual reports is also used in making management decisions to aid in the recovery of listed species, assessing impacts of the permitted activities on the subject species, and in assisting with analyses required under Section 7 of the ESA and the National Environmental Policy Act.

Transfers, transports, exports, birth, and deaths of marine mammals in public display facilities must be reported within a statutory timeframe. If the information is not provided, the public would not have access to information on the status of animals in captivity, which are considered a public trust resource.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with OMB guidelines except for the following:

- A notification report must be provided at least 15 days in advance of a proposed transport, transfer, or export of public display marine mammals, which is a statutory requirement imposed by Congress.
- Section 216.45 of the MMPA implementing regulations requires General Authorization Letter of Confirmation holders to notify the Regional Administrator (RA) at least two weeks in advance of starting the research to allow the RA to coordinate activities with others researchers that may be working in the area. The coordination of research decreases the impact of multiple activities on the marine species. The General Authorization does not provide an exemption from the ESA prohibitions. Unless a Letter of Confirmation holder also has an ESA permit, taking of an ESA-listed species during conduct of the research must be reported within 12 hours and the research suspended.
- Permits for research and enhancement have similar reporting requirements to allow for NMFS Regional coordination of activities to minimize impacts to the species or stocks. In some cases for permit reports involving significant events taking place (e.g., mortality or serious injury of an animal, exceeding the authorized take, or the taking of a species not authorized by the permit), notification for these events must take place typically within two days to two weeks after the event, to allow for quick response by NMFS and the

Permit Holder to incidents with a significant impact on protected and listed species and that were not authorized by the permit and therefore not anticipated.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice, published on April 6, 2009 (4 FR 15458), solicited public comment.

NMFS received one comment from the Marine Mammal Commission in support of the information collection. No other comments were received.

NMFS receives input regularly from the scientific research and public display community, and other interested parties, to obtain their views on the availability of data, frequency of collection, clarity of instructions and record keeping, the amount of burden imposed, and ways to minimize burden. Such information exchanges occur via phone/email from permit applicants/holders, and during meetings such as the Biennial Conference on Marine Mammals, the American Zoo Registrars' annual meetings, the American Zoological Association's annual meetings, and other national and international protected species meetings and workshops.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gifts will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurance of confidentiality is given. A notice of receipt of permit applications is required to be published in the *Federal Register* and applications and supporting documentation are available for review by the public during processing and during the life of the permit. The public is able to search on-line via APPS and obtain information available to the public in an electronic format. All permit and authorization documentation including reports and the MMIRS is subject to the FOIA. However, any personal information that is subject to the Privacy Act is redacted when released under FOIA. The information in this collection is part of a Privacy Act System of Records, COMMERCE/NOAA #12, Marine Mammals, Endangered and Threatened Species, Permits and Exemptions Applicants.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no requirements for submission of information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Estimated total annual hours – 7,716

Total number of respondents – 514

- 51 Applicants for new permit and General Authorization applications
- 200 Permit holders
- 35 General Authorization holders
- 213 Holders of public display marine mammals
- 15 Rehabilitation facilities

Total number of responses – 939 (see table below)

Type of information	Estimated number per year	Hours to complete	Total hours per year
Permit and authorization applications			
Scientific research and/or enhancement (SR/EN)	35	50	1750
Public display (PD)	3	30	90
Photography (PH)	3	10	30
General Authorization (GA)	10	10	100
Amendments to existing permits and authorizations			
Major (actions requiring environmental analyses under NEPA and/or ESA)	50	35	1750
Minor/Authorizations (Actions not requiring environmental review)	105	3	315
GA changes	5	3	15
Reports to existing permits and authorizations and for public display inventory			
SR/EN	200	12	2400
PD	5	2	10
PH	10	2	20
GA	35	8	280
PD Inventory	213	2	426
Record Keeping			
SR/EN	200	2	400
PD	5	2	10
PH	10	2	20
GA	35	2	70
Retain or transfer rehabilitated animals	15	2	30
TOTALS	939		7,716

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

The total annual operations and maintenance cost burden is estimated at \$2,000. These costs were estimated from discussions with NMFS staff who receive applications and process permits. The estimates include costs for postage at \$0.42, overnight express service deliveries at approximately \$35 per package, and certified or express postal deliveries estimated at \$25 per package. Applicants are now able to apply on-line; and therefore, we anticipate over the

next three year period that fewer applicants will be mailing applications. Therefore, while mailing costs have gone up, our overall cost burden has only increased by a small amount.

We do not estimate any additional costs beyond those necessary by normal business practices and/or research purposes (i.e., no costs for equipment such as computers). To publish research results or to justify research funding, a permit holder must maintain detailed records. Holders of marine mammals on public display are required to maintain inventory records for all animals in their collections. Therefore, we are not aware of any additional costs incurred by holders associated with this information collection.

14. Provide estimates of annualized cost to the Federal government.

The estimated annual cost to the Federal Government is \$372,505, calculated at \$35 per hour as follows:

Type of Action	Estimated number per year	Processing Time (per action)	Total cost per year in \$ (number per year x processing time x \$35)
Permit and authorization applications			
SREN Permit Applications	35	120	147,000
PD Permit Applications	3	80	8,400
Photography Permit Applications	3	40	4,200
General Authorization (GA)	10	30	10,500
Amendments to existing permits and authorizations			
Major	50	80	140,000
Minor/Authorizations	105	5	18,375
GA changes	5	5	875
Reports to existing permits and authorizations and for public display inventory			
SR/EN	200	4	28,000
PD	5	2	350
PH	10	2	700
GA	35	2	2,450
PD Inventory	213	1	7,455
Retain or transfer rehabilitated animals	15	8	4,200
Estimated total cost			372,575

The estimated annual number of permit applications and requests to retain or transfer rehabilitated animals has been adjusted as described in Question 12 above. The number of hours to process applications has been updated to reflect the current workload, including increased requirements for environmental analyses under NEPA and ESA:

- Processing time for scientific research and enhancement permit applications has been increased from 80 hours to 120 hours.
- Processing time for public display permit and photography permits has been included separate from scientific research and enhancement permits. These were previously

lumped in a category for all permits, but do not require as much time to process as scientific research and enhancement permits.

- Processing time for Letters of Intent to work under the General Authorization has been increased from 20 to 30 hours.
- Processing time for major amendments has been increased from 50 to 80 hours.
- Processing time for minor amendments/authorizations has been reduced from 10 to 5 hours.

The number of hours to process reports has been updated to reflect the on-line system available for applicants to submit reports electronically, reducing processing time necessary by staff. Processing time for reviewing reports has been decreased as follows: for scientific research/enhancement permits from 10 to 4 hours; for photography and Letters of Confirmation under the General Authorization, from 5 to 2 hours; for public display inventory reports, from 2 to 1 hour. The processing time for requests to retain non-releasable rehabilitated animals was increased from 2 to 8 hours. The cost per hour to process these actions was increased from \$25/hour to \$35/hour.

15. Explain the reasons for any program changes or adjustments.

Summary of Changes in 2009: There was a net decrease of 4 respondents and 54 responses, and a net increase of 988 hours due to adjustments.

SR/EN Permits – Decrease from 40 to 35 scientific research and enhancement permit applications per year: this resulted from averaging the number of permit applications received over the past three years. We do not anticipate large increases in the number of applications received each year, as permits are valid for a 5-year period. The number of permits expiring and the number of new applications received are usually similar in number each year.

Average increase from 32 hours to 50 hours to complete a scientific research and enhancement permit application: this is considered an average processing times for both non-ESA listed marine mammal permits issued under the MMPA, and threatened and endangered species permits issued under the ESA and MMPA. The processing time for non-ESA listed species is considerably lower than for ESA species. For the latter, NMFS is required to complete increasingly detailed environmental analyses when permits involve threatened and endangered species or their critical habitats; and therefore, additional information is often required from the applicant to obtain the appropriate information needed for NEPA and ESA section 7 consultations. This increase takes into account these analyses as well as feedback we have received from our permit applicants.

Increase from 20 to 35 hours to complete a major amendment request: increased requirements under the ESA and NEPA, as discussed above. In general, major amendment requests are similar to but less involved than a permit application request, and thus require less time to complete. Major amendment requests will require some, but not all, of the same information to be submitted as for a new permit application, and are subject to the same level of NEPA and ESA analysis when threatened or endangered species are involved.

Public Display Permits – Decrease from 4 to 3 permits per year and increase from 20 to 30 hours to complete an application: The number of public display permits is estimated based on the number received annually over the past three years. The increase from 20 to 30 hours is based on

the increased requirements under NEPA. This also takes into consideration time factored in during the application process when substantial public comments are received, which often occurs with public display permits.

Photography Permits – Decrease from 10 to 3 photography permits received annually and decrease from 25 to 10 reports received annually: This is based on the average number of photography permits received over the past three years, and there are fewer holders of photography permits requiring reports. Many photography permits have expired and generally, photography permits are for discrete projects and are not renewed after expiration.

General Authorization (GA) – Decrease from 50 to 35 reports and record keeping: there are fewer holders of Letters of Confirmation under the GA requiring reports because many Letters of Confirmation have expired. There has not been an increase in the number of Letters of Intent under the GA over the past three years.

Holders/Marine Mammals – Increase from 194 to 213 Holders and PD inventories: there was an increase in the number of facilities holding marine mammals for public display purposes.

Costs increased from \$1,800 to \$2,000 due to postage increases. This change is not reflected ROCIS, as it was previously rounded up to \$2,000 in the system.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Permit-related activities are summarized and published in The Marine Mammal Commission Annual Report to Congress the subsequent year after permits have been issued. This report is a general summary of the number of applications received and the number of permits and authorizations issued. This report is available on the Commission's web site (<http://www.mmc.gov/>), which in turn is available on the Office of Protected Resources' web site (<http://www.nmfs.noaa.gov/pr/>). A hard copy of the Marine Mammal Inventory Report Summary is available to the public at any time, upon request. Currently there are no other plans for publication of the information collected.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

NA.

18. Explain each exception to the certification statement.

NA.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The information collection does not employ statistical methods.

MARINE MAMMAL DATA SHEET

Date _____
SHT# _____

OMB No. 0648-0084, exp 9/30/12

HN: _____ SN: _____
For NMFS Use Only

I. Holder-Specific:

Holder: _____ Facility: _____
Person or other Entity With Custody of the Marine Mammal Name of Facility (if different from Holder)

Date assumed custody: ____ - ____ - ____ Date arrived at Facility: ____ - ____ - ____

City/State/Zip (include Country for foreign facilities): _____
Location of FacilityAnimal Identification No. _____ Animal Name: _____
(assigned by holder) (assigned by holder)Captive Purpose(s): Public display Scientific research Enhancement

II. Animal-Specific:

Species: _____ Sex: Male Female Unknown
Common Name - Scientific Name

Population Name: _____

NOAA Identification No. _____ (check here if unknown or not yet assigned)Date of birth: ____ - ____ - ____ Actual EstimatedCaptive Origin (check only one): Captive born Wild capture Beach/stranded Unknown

Date of original captivity: ____ - ____ - ____ (ATTACH documentation if before December 21, 1972.)

III. Source:

 Indicate how and from whom custody of this animal was obtained, including change in facility. Captive birth Transfer/ Name of Previous Holder: _____
Transport Name of Previous Facility: _____ Import Permit No. _____ or For medical treatment otherwise unavailable (16 U.S.C. 1379(h)(2)) Beach/Stranded (Please see notes) Wild Capture Permit No. _____ Collector: _____Location: _____ / _____
Latitude/Longitude Geographical Name

IV. Disposition:

 The date and reason this animal left your custody or changed facility. Transfer/ Date: ____ - ____ - ____ Recipient: _____
Transport Facility: _____ Death Date: ____ - ____ - ____ Cause: Premature/still birth Euthanasia OtherIf "Euthanasia," indicate reason: life-threatening condition involving pain/suffering or other

If "Other Cause," describe briefly: _____

 Release Date: ____ - ____ - ____ Permit No. _____ or Unauthorized release/escape
(reintroduction)Location: _____
Geographic Location Tag number or description of other identifying markings

Marine Mammal Data Sheet (MMDS)

NOAA FORM 89-882

OMB Control No. 0648-0084; Expiration Date: 09/30/2009

NOTES:

The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that persons holding marine mammals submit certain information to the National Marine Fisheries Service (NMFS). The MMPA requires that NMFS maintain an inventory of all marine mammals held for public display purposes and scientific research/enhancement (i.e., all marine mammals held captive except for those in captivity before December 21, 1972). In addition, the MMPA requires that NMFS be given advance notice 15 days prior to the transfer/transport of any marine mammal. To ensure compliance with these and related MMPA requirements, NMFS recommends that persons holding marine mammals in captivity use this *Marine Mammal Data Sheet* (MMDS) to submit inventory information regarding their captive marine mammals to NMFS. Use of this form will ensure that the MMPA required information is submitted in a consistent manner and that the NMFS marine mammal inventory is accurate and up-to-date.

Marine Mammal Data Sheets should be used when submitting information to NMFS in compliance with MMPA requirements applicable to persons holding marine mammals, including notifications of any additions/changes to your marine mammal inventory due to:

- Birth, Death, Transfer/Transport
- Retention or Transfer of Rehabilitated Beached and Stranded Marine Mammals (Authorization or Permit)
- Wild Capture, Import, Reintroduction to the Wild, including release or escape (Permit)
- Other (Corrections, etc.)

The animal-specific information in Section II will not change, whereas data in Sections I, III and/or IV will change with transfers/transports (changes of custody and/or facility/location). In accordance with MMPA requirements, NMFS requests notification of any change in custody or facility/location, including captive births and deaths. A copy of the Marine Mammal Inventory Report Summary (MMIRS) may be provided periodically and may be requested at any time by contacting the Permits, Conservation and Education Division at the address listed below.

All permit documentation including reports and inventory information required herein, is subject to the Freedom of Information Act (FOIA) with personal or sensitive information that is subject to the Privacy Act redacted when released under FOIA.

Marine Mammal Transfer/Transport Notifications

NMFS recommends that:

1. Holders notify NMFS of proposed transfers/transports by completing a *Marine Mammal Transfer/Transport Notification* (MMTTN) form, forwarding it to the Receiver for signature and submitting it to NMFS. It is not necessary to submit the MMDS for the animals proposed to be transferred/transported, but sufficient information must be included on the MMTTN to identify the animal(s).
2. The MMTTN must be received by NMFS at least 15 days prior to the actual transfer/transport date. Should you need to transfer/transport an animal before the required 15 day notification, please contact NMFS regarding an emergency waiver.
3. NMFS will reply with an acknowledgement letter and MMDS(s) to be updated upon receipt of the animal(s). The transfer/transport should occur within 60 days after initial submission of the MMTTN. If an extension is necessary, please contact NMFS.
4. At any time within 30 days of the transfer/transport, the Holder should forward to NMFS the updated MMDS for each animal actually transferred/transported (i.e. Section I and, as necessary, Section III to verify receipt of the animal(s)).

Beached and Stranded Marine Mammals – Retention or Transport

The retention or transport/retention of rehabilitated beached and stranded marine mammals requires a permit or written authorization under the MMPA. A permit is required to obtain such marine mammals for purposes of scientific research or enhancing the survival or recovery of species or stocks, or to retain or obtain such marine mammals for public display purposes where such animals have been determined releasable. Where such marine mammals have been determined non-releasable, NMFS authorization is required to retain or obtain them for public display purposes. Please contact the Permits, Conservation and Education Division at the number or address below for information on submitting such a permit application or authorization request.

QUESTIONS? If you need assistance completing this form please contact the Permits Division at (301-713-2289) or write to us at:

Permits, Conservation and Education Division - F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway, Room 13705
Silver Spring, MD 20910

Or by facsimile
at (301) 427-2521

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

PERSON/HOLDER/FACILITY SHEET

PHF # _____ (NMFS use only)

OMB Control No. 0648-0084; Expiration Date: 09/30/2009

I. Person/Holder/Facility - Specific

Active: _____

- Permit/GA Applicant
 Permit/GA Holder
 Animal Holder
 Facility

Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

II. Responsible Official

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

III. Primary Contact

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

PERSON/HOLDER/FACILITY SHEET INSTRUCTIONS

NOAA FORM 89-880
OMB Control No. 0648-0084
Expiration Date: 09/30/2009

The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that persons holding marine mammals submit certain information to the National Marine Fisheries Service (NMFS). Under the MMPA, NMFS is required to maintain an inventory of all marine mammals held for public display purposes and scientific research/enhancement (i.e., all marine mammals held captive except for those in captivity before December 21, 1972). In order to maintain the inventory, contact information for permit holders, facilities, and responsible individuals is needed by NMFS. In addition to receiving information about marine mammal inventories, NMFS also provides periodic updates back to the holders and facilities so that the inventories can be verified. Use of this form will ensure that MMPA-required information is submitted in a consistent manner, that the NMFS inventory of captive marine mammals is accurate and up-to-date, and that holders and facilities can verify their inventories.

1. Please read all of the instructions before filling out this form. It is a computer generated form and will contain basic contact information for the facility and holder when complete.
2. If you are receiving this form for the first time or if it is being sent to you for updating, please fill out the appropriate blank sections (I, II, and/or III) in red.
3. The **Responsible Official** is the individual who is responsible for and who has the signatory authority for marine mammal custody decisions. The **Primary Contact** is the registrar or other person responsible for maintaining the marine mammal inventory records at the facility. The **Responsible Official** and the **Primary Contact** can be the same person, but should be noted in both Sections II and III. Please mail this form to the address listed below.
4. All documentation required for this information collection is considered public information and as such, subject to the Freedom of Information Act (FOIA). No assurance of confidentiality is provided.

QUESTIONS? If you need assistance completing this form please contact the Permits Division at (301-713-2289) or write to us at:

**Permits, Conservation and Education Division - F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway, Room 13705
Silver Spring, MD 20910**

Or by facsimile: (301) 427-2521

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

**APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR
PUBLIC DISPLAY
PERMITS
UNDER THE
MARINE MAMMAL PROTECTION ACT**

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Permits, Conservation and Education Division, F/PR1
Office of Protected Resources
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910-3226
Tel: (301) 713-2289
Fax: (301) 427-2521
Web site: <http://www.nmfs.noaa.gov/pr/>

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**APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR PUBLIC DISPLAY PERMITS UNDER THE
MARINE MAMMAL PROTECTION ACT**

INTRODUCTION

The Marine Mammal Protection Act of 1972 (MMPA) places a moratorium, with certain exceptions, on the taking and importing of marine mammals and marine mammal products. One exception provides for the issuance of permits by either the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS), depending on the species involved¹, to take² marine mammals for purposes of scientific research, public display (including imports), enhancing the survival or recovery of a species or stock, or educational or commercial photography. NMFS and USFWS regulations implementing the permit provisions of the MMPA can be found at 50 CFR Part 216 and 50 CFR Part 18, respectively.

Public display permits are required for the capture of marine mammals in the wild, importation of marine mammals, or retention of releasable stranded marine mammals for purposes of public display. Public display permits are not issued for depleted species under the MMPA and species listed as threatened or endangered under the Endangered Species Act (ESA).

A permit is not required to hold marine mammals for the purpose of public display. Public display of marine mammals is based on three criteria (Section 104(c)(2)(A) of the MMPA). Facilities holding and maintaining marine mammals for public display purposes must: (1) offer a program of education or conservation that is based on professionally recognized standards of the public display community; (2) be registered or hold an exhibitor's license, issued by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS), under the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*); and (3) maintain facilities that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee.

Permits are not issued for the exportation of marine mammals for public display. The receiving holder/facility must meet standards that are comparable to those applicable to domestic facilities and/or permit holders under the MMPA, and the appropriate agency of the foreign government must submit a statement certifying that: (1) the application is accurate; (2) the laws and regulations of the government involved have equivalent provisions to the MMPA and AWA, and that such laws will

¹NMFS has management authority for cetaceans (whales and dolphins) and pinnipeds (except walruses). USFWS has management authority for sea and marine otters, polar bears, walruses, manatees, and dugongs.

²Under the MMPA, the term "take" is defined as: *To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.*

be enforced; and (3) the government will provide comity to requests made by NMFS (e.g., requests to enforce the standards of the MMPA or comparable laws with respect to the facility).

A stranded marine mammal that has been classified as non-releasable may be held for the purposes of public display without a permit and in accordance to the three public display criteria (50 CFR 216.27). A permit is required to hold a releasable beached/stranded marine mammal in captivity for any purpose, including public display.

Species lists and information on the status of species under the MMPA, ESA, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are available by calling the Permits, Conservation and Education Division or on the following web site:

http://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm

Activities/Species for Which These Instructions Apply

These permit instructions provide the format for preparing applications for public display permits for the following:

- first time imports of captive animals for public display in the U.S.;
- captures of animals in the wild in the U.S. for public display purposes; or
- retention of a releasable stranded animal for public display purposes.

As a reminder, public display permits are not available for marine mammal species under NMFS jurisdiction that are listed as depleted under the MMPA or threatened or endangered under the ESA.

These application instructions are also available as a PDF or Microsoft Word document from the NMFS Office of Protected Resources web site: <http://www.nmfs.noaa.gov/pr/>.

For information on applying for permits to conduct other types of activities (e.g., commercial or educational photography, scientific research, enhancement) involving the taking of marine mammals or endangered or threatened species under the MMPA or ESA, please see Appendix IV and NMFS' web sites: <http://www.nmfs.noaa.gov/pr/permits/> and <http://apps.nmfs.noaa.gov/index.cfm> .

Guidelines for Using These Instructions

If you have any questions concerning the preparation of your application, please contact the Permits, Conservation and Education Division (Permits Division) at (301) 713-2289.

When to Apply – Processing of an application usually requires at least three months from submission of a *complete* application, including a mandatory 30-day public comment period. *We strongly recommend that you submit an application at least six months in advance of your proposed activities.* Often, public comments must be addressed, which can increase processing time. For captures from the wild, contact the Permits Division for guidance on when to apply and additional processing time required for any analyses required under the National Environmental Policy Act.

Give Complete Information – The permit processing “clock” does not begin until the Permits Division has determined that an application is complete. An application must be considered complete before the Permits Division can publish a Notice of Receipt in the *Federal Register*, which initiates a 30-day public comment period. As part of the review process, the completed application is also forwarded to the appropriate NMFS Region(s) and to the Marine Mammal Commission (<http://www.mmc.gov/>) for review and comment.

Incomplete applications cannot be processed. NMFS may return incomplete applications or request additional information from an applicant. If the requested information is not received within 60 days of the request, the application will be returned. Therefore, please provide complete and specific information according to the instructions. To expedite processing, when a question does not apply, please indicate “Not Applicable” (N/A) and provide a brief explanation as to why the question is not applicable.

You are encouraged to contact the Permits Division with any questions in advance of submitting an application. It is often helpful to draft an application and send it to NMFS Permits Division for preliminary review. If possible, please send the draft electronically (contact the Permits Division for a current e-mail address) to save on paper and postage. Permits Division staff will review your draft application and assist you in ensuring that it is complete. Once the application is complete, a signed copy of the application should be mailed to the Permits Division at the address listed below.

It is important that all applications conform to the instructions provided. Applications that do not adhere to the following requirements for content and format will be considered incomplete and may be returned to the applicant or will result in processing delays if the applicant needs to be contacted for additional information. To facilitate review, information should be presented in the designated categories/headings, and in the order listed. Use of additional subheadings to clarify the application may be added at the discretion of the applicant. Line spacing, font size and style are at the discretion of the applicant, but the application must be readily legible. We suggest Times New Roman 12 pt font. Do not submit bound applications.

Where to send your application - Submit a signed original and one hard copy of the application to

the Chief, Permits, Conservation and Education Division, Office of Protected Resources, 1315 East-West Highway, F/PR1 Room 13705, Silver Spring, Maryland 20910-3226. All applications must also be accompanied by an electronic copy (in Word, WordPerfect, or PDF), which can be included on a 3.5" disk or CD, or sent as an email attachment.

Current or Previous Permit Holders – If you currently hold or have held a NMFS permit in the past, a new application cannot be processed until all reports required to date under those permits have been submitted and determined to be complete and in compliance with reporting requirements.

Permit Amendments – Requests for amendments to permits should address all applicable sections of these instructions, including a detailed description of the proposed changes. Amendment requests involving an increase in number or changes of location or species are subject to a 30-day public review and are granted or denied at the discretion of the Director, Office of Protected Resources. Minor changes not involving numbers, species, or locations may be authorized at the discretion of the Director without public review. To request an amendment, send the application to the Chief, Permits, Conservation and Education Division.

Permit Fees – Section 104(g) of the MMPA provides the authority to establish and charge a reasonable permit fee; however, there is no fee at this time.

USFWS Permits – Application instructions for sea turtles on land and marine mammal species under USFWS jurisdiction can be obtained by calling the USFWS Division of Management Authority at (800) 358-2104 or by visiting the Service's web site at <http://permits.fws.gov/>.

CITES Import/Export Permits – U.S. regulations require that imports or exports of wildlife or parts thereof listed in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹ be accompanied by the proper CITES permit or documentation (50 CFR 23). This is in addition to the required permit under the MMPA.

The USFWS Division of Management Authority (see telephone number and web site, above) is responsible for implementing CITES. The CITES status of threatened and endangered species and marine mammals under NMFS and USFWS jurisdiction is indicated on the following web site: <http://www.cites.org/>. If your activities will involve import or export of wildlife (including tissue samples or other parts), you are responsible for securing a CITES permit from USFWS as necessary.

¹ CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between Governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES works by subjecting international trade in specimens of selected species to certain controls. All import, export, re-export and introduction from the sea of species covered by the Convention has to be authorized through a licensing system.

INSTRUCTIONS

I. Title of the Application

Example: “Application for a Permit for Public Display Under the Marine Mammal Protection Act.”

II. Date of the Application

III. Applicant

State the applicant’s complete name, address, telephone number, fax number, e-mail, and institutional affiliation, if any. If the Applicant is a partnership or corporation describe the business. In addition, state the same contact information of the Holder, Primary Contact, and Responsible Official (see Attachment I for definitions of these terms) if different from the Applicant.

IV. Description of the Marine Mammals and the Proposed Activity

A. Statement of Work

Provide a brief summary, not more than 200 words, of the proposed activity. This summary will be published in the *Federal Register* Notice of Receipt for a 30-day public comment period. The summary should include concise statements of the following information:

- Purpose of the activity;
- Target species (both common and scientific names);
- Type and manner of take or import;
- Numbers of animals to be taken, by species, for each activity (over a specified time, e.g., per year);
- Numbers and kinds of non-target marine mammal and ESA-listed species that may be taken incidentally during proposed activities;
- Specific geographic location(s) of the take, including locations from which animals will be imported; and
- Requested period of the permit².

²Note that permits are issued for up to a five-year period.

B. Summary of Marine Mammals to be Taken or Imported

List the target species (common and scientific names) and, as applicable, the subspecies, population group and range that may be taken or imported.

For takes in the wild, list any non-target species, including but not limited to, marine mammals, reptiles, sea birds, sharks, etc., and any ESA-listed species (plant or animal) that may occur in the capture area, and therefore, may be taken (e.g., disturbed, harassed, or injured) incidentally during the course of your proposed activities. Include any USFWS species that may be incidentally taken.

Indicate the status of each species or stock as determined under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Appendix I, II, or III) as applicable. Note that species listed as depleted under the MMPA or threatened or endangered under the ESA cannot be covered under this permit. Species information is available at:

<http://www.nmfs.noaa.gov/pr/species/>

<http://www.nmfs.noaa.gov/pr/sars/>

<http://www.fws.gov/>

<http://www.cites.org/>

C. Description of the Proposed Activity

1. Give the dates and locations of the proposed taking or import. Dates and locations should be identified as specifically as possible, including ports of entry (see attached list).
2. State the proposed duration of the permit.
3. Indicate the types of taking involved, (e.g., capture; import). Clearly indicate the number, estimated or known age, size, sex, and reproductive condition of the marine mammals that will be taken or imported. If applicable, include the animal's identification number. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal.

D. If Marine Mammals are to be Collected from the Wild

1. List the names, if other than the Applicant, and qualifications of the personnel who will capture the animals.
2. Provide a written certification from the attending veterinarian responsible for the animals during and immediately after capture that the methods of capture and post-capture care will be adequate to ensure the well-being of the animals.
3. Give a detailed description of the manner of capture, including gear to be used. Describe the techniques and equipment to be used to approach, capture, and restrain; for example, indicate: (a) any drugs or other substances to be used, including the name, dosage, and method of administration; and/or (b) the method of capture and restraint.
4. Describe the pen, tank, container, cage, cradle, or other device used post-capture and thereafter during transportation to the initial holding facility.
5. Describe the mode of transportation, special care during transport, and the length of time required for the transfer from the capture site to the initial holding facility.
6. Provide any alternatives to the proposed manner of taking or importation, and state why the proposed method is considered humane.
7. In addition, if a captive stock of the species concerned is available, the applicant must explain why the animals cannot be obtained from such captive stock.
9. If an animal may be determined to be unsuitable for public display, give details regarding the specific protocol for return to the wild.

E. If Marine Mammals are to be Imported into the U.S.

1. Provide the names and qualifications of the personnel who will accompany the animals during import.
2. Describe the pen, tank, container, cage, cradle or other device used during import and thereafter during transportation to the initial holding facility.
3. Describe the mode of transportation, special care during transport, and the length of time required for the transfer from the foreign facility to the initial holding facility in the United States.
4. Submit a written certification from the attending veterinarian responsible for the animals during import that the methods of import and post-import care will be adequate to ensure the well-being of the animals.

5. Name the country of exportation (*i.e.*, the country from which the marine mammal is to be imported into the United States) and the country of origin (country from which the animal was originally taken from the wild or where born in captivity) if different from the country of exportation.
6. Describe how the marine mammals were taken in the country of origin. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal. If the marine mammal was subsequently exported to a country different from the country of origin, cite the dates, the manner and circumstances under which it was imported into the country of exportation.
7. Submit a statement and, to the extent practicable, documentation concerning whether the marine mammal to be imported was captured and is presently being held in compliance with the laws of the country of exportation.
8. Provide a statement whether taking of marine mammals will occur in order to replace the marine mammals to be imported, or whether the proposed import will result in an increased demand for marine mammals.
9. If the import is necessary for the protection or welfare of the marine mammals, discuss the circumstances involved and any alternatives considered.

F. Effects of the Proposed Activity

Describe the effects of the proposed taking or import, by itself or in combination with other known or suspected takings or imports, on: (a) the individual animals concerned (e.g., describe how the proposed activity will affect the individual's behavior, physiology, etc.); (b) the relevant species or stock (for takes from the wild, describe what impacts there will be from removal of individuals from the population and from incidental disturbance); (c) the human environment (e.g., describe how your actions will affect the general public; describe what measures are in place to ensure human health and safety during the proposed activities); and (d) the marine ecosystem (for takes from the wild, indicate if you will be incidentally taking non-target species, etc.). The description must be sufficiently detailed to enable the preparation of any documentation required under the National Environmental Protection Act (NEPA) (e.g., an environmental assessment (EA), environmental impact statement (EIS), or documentation to support a determination that the conduct of the activity is categorically excluded from the requirement to prepare an EA or EIS).

You are required to answer all five questions on this page. Please answer each question completely. "Yes" or "no" are not sufficient answers. If a question does not apply, provide an explanation.

- 1) Will your activities involve equipment (e.g., scientific instruments) or techniques that are new or may be considered experimental or controversial? If yes, are they likely to be adopted by other researchers in the future?
- 2) Do your activities involve collecting, handling, or transporting potentially infectious agents or pathogens (e.g., biological specimens such as blood)? Do your activities involve using or transporting hazardous substances (e.g., toxic chemicals)? If yes, provide a description of protocols you will use to ensure humans are not infected or injured.
- 3) Do any of your activities occur in or near unique geographic areas such as state or National Marine Sanctuaries, Marine Protected Areas, Parks or Wilderness Areas, Wildlife Refuges, Wild and Scenic Rivers, designated Critical Habitat for endangered or threatened species, Essential Fish Habitat, etc.? If yes, would any aspect of your activities impact the physical environment, such as by direct alteration of substrate (e.g., by bottom trawling, net setting, anchoring vessels or buoys, erecting blinds or other structures, disrupting nesting bird habitat)?
- 4) Could your work affect sites listed in or eligible for listing in the National Register of Historic Places? Could your work cause loss or destruction of scientific, cultural, or historic resources (e.g., archeological resources)? If yes, list the sites and explain how they might be affected or why they would not be affected.
- 5) Could any of your activities, intentionally or not, involve the transport any materials, biological or otherwise, from one area to another (e.g., transporting animals or tissues, discharging ballast water, working in sensitive remote areas)? If yes, explain the types of activities. Describe all measures you would take to prevent the possible introduction or spread of non-indigenous or invasive species (including plants, animals, microbes, or other biological agents).

V. Export Requirements

A permit is not required for the export of marine mammals for public display purposes if the marine mammals to be exported are held legally for public display in the U.S.

However, such exports must meet standards comparable to those applicable to the transport of marine mammals between U.S. facilities according to the MMPA. These requirements are listed below.

- A. Foreign applicants that intend only to export from the U.S. marine mammals for the purposes of public display must meet the following requirements:
 - 1. Offer an education or conservation program comparable to one that is based on professionally recognized standards of the U.S. public display community.
 - 2. Meet standards comparable to those a person in the U.S. must meet to be issued a license under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*).
 - 3. Maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than charging an admission fee.

- B. The appropriate agency of the foreign government (e.g., the CITES Management Authority of the government) must submit a statement certifying that:
 - 1. The information submitted concerning the foreign facility is accurate.
 - 2. The laws and regulation of the government involved permit that government's enforcement of requirements of the U.S. Marine Mammal Protection Act and the Animal Welfare Act, and that government will enforce such requirements.
 - 3. If it is determined that the foreign facility involved has acted in a manner inconsistent with MMPA or the AWA, that would be applicable if the foreign facility were a U.S. facility, the government concerned will afford comity to an enforcement decision that may be made by the U.S. National Marine Fisheries Service, including seizure or arrangements for other disposition of marine mammals exported from the U.S. and the progeny of such marine mammals and the recovery of expenses for such seizure or other disposition.

VI. General Requirements for Public Display

- A. Names and addresses of the facility(ies) where the marine mammals to be imported or captured will be maintained. Indicate hours of operation and cost of admission. (Attach copies of facility brochures or public notices advertising this information, if available.)
- B. License (attach a copy) or registration number issued under the Animal Welfare Act by the Department of Agriculture's Animal Plant and Health Inspection Service (APHIS).
- C. Specify the professionally recognized standards of the public display community upon which the education or conservation program offered by the applicant is based³, and provide a general description of the program offered for reference purposes.

VII. Previous Permits

- A. If issued previous permits for the taking or import of marine mammals and final reports have not yet been submitted, ensure that all required reports to date have been submitted.
- B. If applicable, provide the names and addresses of cooperating institutions and individuals that previously held permits.
- C. Indicate whether other Federal, State, local or international permits or authorizations (e.g., USFWS, NOAA National Marine Sanctuaries, the Army Corps of Engineers, CITES) are being sought in connection with the requested permit.

³

Standards for education and conservation programs developed and endorsed by the American Association of Zoos and Aquariums (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance), representing approximately 60% of the U.S. marine mammal public display community, were published in the Federal Register on October 6, 1994 (59 FR 50900). (A copy of this notice is attached in the Appendices.) If applicable, these AZA/Alliance standards may be referenced as the standards on which your education or conservation program is based. However, please note that while these professionally recognized standards have been provided by the AZA and Alliance, they represent only one example of such standards. Other professionally recognized standards of the public display community may differ from this example. If your education or conservation program is based upon different professionally recognized standards of the public display community, please provide a copy of these standards. NMFS maintains a record of these standards for reference purposes only.

VIII. Certification and Signature

The following Certification, followed by the Signature, Name, and Title of the Applicant or Responsible Party, must be submitted as the concluding section of the application.

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the following statute and the regulations promulgated thereunder, as indicated in section I. of this application:

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and regulations (50 CFR Part 216).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972."

Signature of Applicant and Date of Signature

Typed or Printed Name of Applicant

Title of Applicant

Additional Information

Under section 104(c) of the MMPA, as amended, persons may be authorized to take marine mammals in the wild or to import marine mammals for public display purposes. MMPA section 104 is available at the following web site: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>. The information requested in this application will be used to determine whether the activities described in the application are consistent with the requirements under the MMPA for public display permits.

Paperwork Reduction Act Statement: Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

All permit documentation including the application, permit and amendments, reports, and inventory information required herein, is considered public information and as such, is subject to the Freedom of Information Act. The applicant is required to respond to the information requested in this application in order to obtain a permit.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

APPENDIX I – GLOSSARY OF TERMS

Applicant - The applicant must be the person who has the responsibility for and the authority to determine the disposition of the marine mammal to be received under the permit. If the applicant is a corporation or partnership, the application must indicate the date on incorporation or when the partnership was formed, and the State in which the corporation or partnership was formed. In the case of imports, when the responsibility for and authority to determine the disposition of the marine mammal remains with a foreign entity, as in the case of a breeding loan, the applicant must be the U.S. entity that will assume temporary custody of the marine mammal to be imported.

Comity - A rule of courtesy by which one government honors decisions made by another government. It is in situations where the United States lacks jurisdiction over persons or things located abroad that the U.S. Government may need to seek assurances of comity from foreign governments. Executive Branch agencies have inherent authority to ask foreign governments to honor decisions of the U.S. Government on the basis of comity. It has been the policy of the NMFS since 1975 to require a comity statement for the export of marine mammals.

Custody - The responsibility for and the authority to determine the disposition of a captive marine mammal, including transfer and transport.

Facility - In the context specific to captive marine mammals: (1) one or more permanent primary enclosures used to hold marine mammals captive (*i.e.*, pools, lagoons) and associated infrastructure (*i.e.*, equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or (2) a traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Holder - The person who has the custody, including the responsibility for and the authority to determine the final disposition of a captive marine mammal, and may be a public display permit holder.

Primary Contact - The registrar or other person responsible for maintaining the marine mammal inventory records at the facility.

Receiver - A person who receives custody of a transferred marine mammal. Where an interest in a marine mammal is being purchased or otherwise transferred, the receiver is the purchaser or transferee.

Responsible Official - The individual who is responsible for and who has the signatory authority for marine mammal custody decisions.

Transfer - conveyance of any custodial interest in a marine mammal by any means including, but not limited to donation, purchase, or sale. A conveyance of interest in a marine mammal means the transfer of a whole interest. A transfer of a marine mammal may occur without a transport from one facility to another.

Transport - The physical movement of marine mammals between facilities or distinct geographic locations. A transport of a marine mammal may occur without a transfer of custody (i.e., a loan).

APPENDIX II - RELEVANT STATUTES

Animal Welfare Act

The Animal Welfare Act (AWA) (U.S.C. 2131 *et seq.*) was enacted in 1966 to “insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) assure the humane treatment of animals during transportation in commerce; and (3) protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.”

The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (USDA/APHIS), has responsibility under the AWA for captive warm-blooded animals, including marine mammals. APHIS has established regulations and standards for animal care, including “Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals” (9 CFR Ch.1, Subpart E).

Most U.S. facilities maintaining animals as defined under the AWA, including marine mammals, are required to be licensed or registered by APHIS. For information concerning the AWA and its requirements and the name and address of the Veterinarian in Charge in the State concerned, contact the Regulatory Enforcement and Animal Care staff, USDA/APHIS (301-734-7833) or visit <http://www.aphis.usda.gov/>

Freedom of Information Act

The Freedom of Information Act (FOIA) (5 U.S.C. 552) was enacted in 1966 to ensure that the federal government makes government information available to the public when requested. Certain restrictions apply to the release of information (e.g., classified documents).

Fur Seal Act

The Fur Seal Act (FSA) (16 U.S.C. 1151-1187) was enacted in 1966 to prohibit the taking of North Pacific fur seals, except by Alaska natives for subsistence purposes or by a permit issued by NMFS. NMFS’ regulations implementing the Fur Seal Act can be found at 50 CFR Part 215 - 216.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361-1407) was enacted in 1972 in partial response to growing concerns among scientists and the general public that certain species and populations of marine mammals were in danger of extinction or depletion as a result of human activities. The MMPA includes a general moratorium on the taking⁴ and importing of marine

⁴Take (as defined in the MMPA): *To harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes by regulatory definition, without limitation, any of the following: the collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to*

mammals, which is subject to a number of exceptions. The MMPA also established the Marine Mammal Commission and provides the authority under which the Commission operates.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) was enacted in 1969 to ensure that the government gives proper consideration to the environment prior to undertaking any major federal action that could significantly affect the environment. Issuance of permits is considered a major federal action. Some applications may require additional environmental analyses under NEPA, which can substantially increase the time required for processing. If the activity is considered controversial or under certain other circumstances, preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) may be necessary. If an application does not contain sufficient information on the environmental impact of the proposed activity to determine whether an EA/EIS is necessary, or if the information is insufficient to complete such analyses, the application may be returned to the applicant or processing may be delayed.

The applicant may submit a draft EA with the application to facilitate processing. The Permits Division will review and accept a draft EA if it is determined to be sufficient. Otherwise, the Permits Division will prepare an EA or EIS on the potential environmental impacts of the proposed activity using the description of the activities provided in the application and the best available information on the effects of such activities. Depending on workload, resources, and the complexity of the research proposal, preparation of an EA may take six months or more. Preparation of a final EIS typically takes well over a year. Please contact the Permits Division for guidance regarding whether or not an EA or EIS is needed.

APPENDIX III – SUPPLEMENTAL INFORMATION

Atlantic bottlenose dolphin (*Tursiops truncatus*)

The taking of bottlenose dolphins in the Eastern U.S. is limited to certain areas, and quotas have been established limiting the number that may be taken each year. Permit Holders are required to consult with the NMFS Southeast Regional Director for approval of the specific dates and locations of any taking from the wild from this area. The Regional Director will coordinate the Permit Holder's collection activities with other collections and with research activities being conducted in the proposed collection area so as to avoid possible interference and cumulative adverse impacts on the subject population.

Beached/Stranded Animals

NMFS encourages the use of rehabilitated beached/stranded animals in lieu of taking animals from wild populations. Applicants must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock, particularly in the case of U.S. coastal pinnipeds, such as California sea lions (*Zalophus californianus*). For information on the availability of these animals contact the appropriate NMFS Regional Office (<http://www.nmfs.noaa.gov/pr/health/coordinators.htm>).

Commercial or Educational Photography Permits

The 1994 amendments to the MMPA provided new authority to issue permits for educational and commercial photography involving only Level B harassment⁵ of non-ESA listed marine mammals⁶. Presently, NMFS is reviewing such applications on a pilot basis and may publish a Proposed Rule in the *Federal Register* based in part on the information obtained from these applications (50 CFR 216.42). The commercial photography applications instructions can be obtained at the following web site: <http://www.nmfs.noaa.gov/pr/permits/>

Please Note: These permits apply only to commercial or educational photography of non-ESA listed species under the MMPA with methods involving Level B harassment. These permits do not provide any authorization for activities involving ESA-listed species, methods involving Level A harassment⁴, or scientific research.

5 Harassment (as defined in the MMPA) – Any act of pursuit, torment, or annoyance which - 1) Level A harassment: has the potential to injure a marine mammal or marine mammal stock in the wild; or 2) Level B harassment: has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

6 A list of marine mammal species and information on the status of the species under the ESA is available at the following web site: http://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm.

Import/Export of Pre-MMPA Marine Mammal Parts (i.e., parts taken prior to 1972)

Marine mammal parts include any part of a marine mammal, both hard and soft, but do not include urine or feces. A letter of authorization is required for importing or exporting “pre-Act” marine mammal parts under NMFS jurisdiction for commercial or personal use. Pre-Act parts are either those marine mammal parts taken prior to enactment of the MMPA or those parts of species listed under the ESA that are at least 100 years old. Instructions for how to apply for authorization to import or export pre-Act marine mammal parts may be found at:

http://www.nmfs.noaa.gov/pr/permits/parts_instructions.htm.

Northern fur seals (*Callorhinus ursinus*)

The northern fur seal has been designated as depleted by NMFS. Section 102(b)(3) of the Marine MMPA prohibits the taking of a depleted species except for scientific research or enhancement purposes.

Receipt of Marine Mammal Parts from the NMFS Stranding Network under the MMPA

If you would like to receive marine mammal parts taken from stranded marine mammals after 1972 for use in scientific research, education, or curation, please contact the appropriate NMFS Stranding Network Coordinator at <http://www.nmmfs.noaa.gov/pr/health/coordinators.htm>. *Note that if you intend to develop cell lines from such parts for research purposes, you must apply for a scientific research permit using the application instructions for scientific research purposes.*

Scientific Research and/or Enhancement under the MMPA, ESA, and/or FSA for Species under the Jurisdiction of the NMFS and/or USFWS

The Marine Mammal Protection Act of 1972 (MMPA) places a moratorium, with certain exceptions, on the taking and importing of marine mammals and marine mammal products. One exception provides for the issuance of permits by either the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS), depending on the species involved¹, to take² marine mammals for purposes of scientific research, public display, enhancing the survival or recovery of a species or stock, or educational or commercial photography. NMFS and USFWS regulations implementing the permit provisions of the MMPA can be found at 50 CFR Part 216 and 50 CFR Part 18, respectively.

¹NMFS has management authority for cetaceans (whales and dolphins) and pinnipeds (except walruses). USFWS has management authority for sea and marine otters, polar bears, walruses, manatees, and dugongs.

²Under the MMPA, the term “take” is defined as: *To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.*

The Endangered Species Act of 1973 (ESA) prohibits, with certain exceptions, the taking³ of species listed as threatened or endangered. The ESA provides for the issuance of permits by either NMFS or the USFWS to take threatened or endangered species for scientific research purposes and/or to enhance a species propagation or survival. Under the ESA, NMFS and USFWS share management responsibility for marine mammals (see footnote 1) and for threatened and endangered sea turtles (NMFS for sea turtles in the water, and USFWS for sea turtles on land). NMFS has sole responsibility under the ESA for salmon, shortnose sturgeon, smalltooth sawfish, and white abalone. NMFS regulations implementing the provisions of the ESA can be found at 50 CFR Parts 216 and 222-226; USFWS regulations can be found at 50 CFR Part 17.

The Fur Seal Act of 1966 (FSA) provides for research on fur seal resources of the North Pacific and permits for the taking, transport, import, export, or possession of fur seals of the North Pacific or their parts for educational, scientific, or exhibition purposes. Since northern fur seals are also marine mammals, to avoid duplication, applications for permits for scientific research are also processed under the MMPA regulations of 50 CFR Part 216.

Applications for scientific research or enhancement for marine species under NMFS jurisdiction are available at the following web site: <http://www.nmfs.noaa.gov/pr/permits/> .

NMFS may authorize the use of healthy rehabilitated beached/stranded marine mammals for research purposes in lieu of taking animals from wild populations (50 CFR 216.27). Where a captive marine mammal is necessary for the conduct of scientific research, particularly in the case of U.S. coastal pinnipeds, such as California sea lions, applicants must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock. For information on the availability of these animals contact the appropriate NMFS Regional Office: <http://www.nmmfs.noaa.gov/pr/health/coordinators.htm>

The USFWS maintains jurisdiction over beached/stranded sea turtles and sea turtles in rehabilitation. Please contact the USFWS Division of Management Authority at (800) 358-2104 with any questions regarding stranded sea turtles.

Salmon Research and Enhancement Permits under the ESA

Permits to conduct research or enhancement on endangered or threatened salmon are issued by the NMFS Northwest and Southwest Regional Offices. Information may be obtained by visiting their web sites: Northwest Region main page: <http://www.nwr.noaa.gov> and the Southwest Region main page: <http://swfsc.nmfs.noaa.gov> or by calling the Endangered Species Division, Office of Protected Resources at (301) 713-1401 for further information.

U.S. Fish and Wildlife Service Wildlife Inspectors

http://www.fws.gov/le/ImpExp/Contact_Info_Ports.htm

³Under the ESA, the term “take” is defined as: *To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*

PRA Justification: Application Instructions for Public Display Permits

50 CFR 216.43 reserved for public display provisions not codified; section 104(c) of the MMPA as amended by P.L. 103-238.

Application instructions for public display permit applicants reflect the 1994 amendments to the MMPA and are processed according to 50 CFR part 216, subpart D, as applicable. Section 104(c)(2) of the MMPA was amended whereby the need to obtain a public display permit is limited to captures of marine mammals from the wild or import of marine mammals.

Section I-III of the application instructions correspond to general permit application submission, review, and decisions procedures pursuant to 50 CFR 216.33 for persons seeking special exception permits. Information requested in Section IV, the Previous Permits Section VII, and Certification Section VIII at the end of the application are also general requirements for special exception permits (see scientific research and enhancement permit application justification discussion for regulatory citations and purpose of requested information).

The following is discussed in detail here for public display permits: Section IV. E. Import Requirements: 50 CFR part 14; 50 CFR 216.35(c-d); 216.36(a)(iii). Since the AWA standards for care, maintenance and transportation of marine mammals are not enforceable by APHIS until the marine mammal reaches the U.S., National Marine Fisheries Service (NMFS) can condition permits to ensure the well-being of the animals while in transit in the foreign country and to ensure that the applicant has planned appropriately for the animal(s) during transport. Except for purposes of scientific research or enhancement, the import of pregnant, lactating, or either unweaned or less than 8 month old marine mammals at the time of taking or transfer/transport is prohibited under Section 102 of the MMPA, unless such import is necessary for the protection or welfare of the marine mammal. Applicants must submit this information if they propose to import marine mammals under the authority of a public display permit. An applicant proposing to import a live animal for public display must demonstrate that the manner of taking in the foreign country was consistent with what would be allowed in the U.S. or on the high seas under the jurisdiction of the MMPA, to ensure that animals are taken humanely as required by the MMPA. The applicant must state whether the import proposed will result in replacement takes or an increased demand to take marine mammals from the wild. This information is necessary to consider cumulative effects and any indirect impacts of permit issuance, and to avoid circumstances leading to unauthorized taking of marine mammals.

Section V. Export: 50 CFR 216.33(b)(1-2). A permit is not required for the export of marine mammals for public display purposes. However, these exports must meet standards comparable to those applicable to the transport of marine mammals between U.S. facilities (16 U.S.C. 1374 *et seq.*). These requirements are provided to applicants for information. Section VI. General Requirements for Public Display: This section requests the applicant to submit information necessary to address the requirements of Section 104(c)(2)(A) of the MMPA, which limits the issuance of public display permits to applications who (1) are licensed or registered under the AWA by APHIS; (2) offer a program for education or conservation purposes that is based on professionally recognized standards of the public display industry; and (3) maintain a facility that is

open to the public on a regularly scheduled basis with access not restricted other than by an admission fee. Without submission of the information requested in this application, NMFS would not be able to determine whether the applicant meets the three issuance criteria.

National Marine Fisheries Service Marine Mammal and Endangered Species Research and Enhancement Permits – Justification for Collection of Information

Background

Under section 104 of the Marine Mammal Protection Act of 1972 (MMPA) and section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA), NMFS may issue permits for scientific research purposes or to enhance the propagation, survival, or recovery of protected marine species. Under the Fur Seal Act of 1966 (FSA), NMFS may authorize research on fur seals of the North Pacific pursuant to a permit.

Pre-application Guide (PAG)

The information obtained when filling out the PAG is necessary to determine what type of permit/permit application is needed.

Completing an Application

Give Complete Information

We return incomplete applications with explanation or request additional information. If we request additional information and do not receive it within 60 days, we may withdraw the application. Applicable regulations: 50 CFR 216.33(c)(4) and 222.302(c)(1).

Project Information Page

File Number: Automatically generated by APPS. This number is necessary for identification of the application in the APPS system/database, in the *Federal Register* notices of receipt and issuance or denial, during correspondence with the applicant, and to identify the permit administrative record. This number is also used as the permit ID number when issued.

***Project Title:** Necessary for identification of subject matter/type of permit application. Applicable regulations: 50 CFR 216.33(a) and 222.308(b)(1).

***Project Status:** Automatically generated by APPS. Indicates a new permit is requested.

Previous Federal or state permit #: Not required. If entered, this information provides permit analysts with the applicant's previous permit number to determine compliance with a previous permit's terms and conditions.

***Permits Requested:** Automatically generated by APPS. This is necessary to determine the appropriate permit to issue and the required regulatory and statutory processing and issuance requirements, and applicable permit restrictions.

***Where will the activities occur?:** Permits must specify locations of authorized take or import/export. Necessary to determine if work will be conducted in U.S., and therefore, whether a permit is needed. This information is also necessary for considering impacts to protected species and for conducting the appropriate environmental analyses under NEPA, MMPA, and ESA. Applicable regulations/statutes: 50 CFR 216.36(a)(1)(iii), and MMPA section 104(b)(2)(B); 50 CFR 222.308(b)(6)(i) and (iv), and 222.308(d)(2).

***Research Timeframe and Sampling Season/Project Duration:** Permits must specify the period during which the permit is valid. Permits are valid for five years unless a shorter time period is requested. This information provides a basis to determine (1) whether it is likely that the objectives will be met during the time allotted with the available resources; (2) when the permit is needed (i.e., the start date); (3) impacts to the affected species during sensitive periods such as nursing and breeding; and (4) potential cumulative impacts that may arise from multiple permit holders working on the same species, in the same location, and at the same time. Applicable regulations/statutes: 50 CFR 216.35(b), 216.36(a)(iv), and MMPA section 104(b)(2)(C); 50 CFR 222.308(b)(5)(i) and (b)(6)(iii).

***Abstract:** NMFS is required to publish notice of receipt of an application in the *Federal Register* for a 30-day public comment period. To ensure that an accurate summary of the application is published, applicants are requested to include a short abstract of the request. Applicable regulations/statutes: 50 CFR 216.33(d) and MMPA section 104(d)(2); and 50 CFR 222.303(b).

Project Description Page

***Project Purpose: Hypothesis/Objectives and Justification**

The applicant must provide the objectives of their proposed activity, give a hypothesis (for research), explain how the activities will ensure survival of the species (for enhancement), and provide justification for the sample size and for requesting takes of protected species. This information is required to determine (1) if the applicant is proposing bona fide scientific research, (2) if the proposed enhancement activities are necessary and consistent with a species' recovery plan, (3) ensure the sample size is appropriate to complete the objectives and not unnecessarily adversely impact the target species, (4) whether the activities can be accomplished with a non-protected species. The applicant must also explain the role of Co-investigators to ensure that we can assess

their qualifications for the activities to be conducted and that the personnel are reasonable in number. For threatened and endangered species, additional justification is required, such as how the activity will contribute to the objectives of the species' recovery plan and other specific information required pursuant to the MMPA, ESA, and their implementing regulations. Applicable regulations/statutes: 50 CFR 216.34(a)(3) and 216.41(b); 222.308(b)(4-5), 222.308(b)(10), and 222.308(c)(4), and statutory requirements (MMPA 104(c) and ESA section 10(a)(1)(A)).

****Project Description:*** This section requires the applicant to precisely describe the activities they are proposing. Special exception permits must specify the number and kind of species authorized to be taken, the location of take, and the manner of take. Section 104(b) of the MMPA requires permits to specify the number and kind of marine mammals authorized to be taken, the manner and location of the taking, and the period of validity for the permit. Section 104(c)(1) of the MMPA requires permits to specify the methods of capture, supervision, care and transportation and requires that the taking is consistent with the purposes of the MMPA. Section 104(c)(3) of the MMPA requires applicants for scientific research permits to submit information indicating that the taking is required to further a bona fide scientific purpose. NMFS must determine that the proposed method of taking is humane and will not present any unnecessary risks to the health and welfare of marine mammals; and that the proposed activity by itself or in combination with other activities, will not have a significant adverse impact of the species or stock. Applicable regulations: 50 CFR 216.34(a)(1-7), 216.36(a)(1)(i-ii), and section 216.41.

Regulations under the ESA require the applicant to provide a detailed description of how the species will be used in order to determine whether the permit will operate to the disadvantage of the species, and whether the permit will further a bona fide and necessary research or enhancement purpose. Detailed protocols for transporting animals must also be provided. Applicable regulations: 50 CFR 222.308(b)(4)(ii), (b)(5-7), and (c-d).

Import/Export requirements: NMFS must determine that marine mammals or their parts to be imported are taken humanely and in compliance with the Acts. To satisfy this requirement NMFS needs to know the country in which the taking will occur, how the taking will be conducted, and the marine mammal management program/legal authority of the country of taking. Any marine mammal part imported must not have been obtained as a result of lethal take inconsistent with the Acts unless authorized by the Office Director. An exception to certain restrictions in the Acts is provided if the import or export is necessary to benefit the health or welfare of the protected species concerned. Section 104(c)(9) of the MMPA states, "No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit...". The applicant is required to submit information regarding exporting live marine mammals to ensure that (1) all applicable laws are met, whether it is U.S. or foreign and (2) that protected species taken (including held captive) in a foreign country are not taken or held in an inhumane manner because of less-protective laws of a foreign country. Applicable regulations: 50 CFR

part 14; 50 CFR 216.33(b), 216.34(a)(7), 216.35(c-d), 216.36(a)(1)(iii), 216.37(d), and 216.41(c)(1)(v).

NMFS must conduct a NEPA analysis for each permit issued, which requires a description of the proposed action in order to determine the effects such action will have on the target and non-target species and the environment. As required, NMFS must request consultation under section 7 of the ESA regarding impacts to threatened and endangered species, which also requires detailed a description of the proposed action in order to determine whether the activity will jeopardize the existence of the listed species or adversely modify critical habitat. Applicable regulations: 50 CFR 216. 33, NEPA CEQ regulations, and 50 CFR part 402 (interagency consultations).

Project Supplemental Information Page

***Status of the Affected Species:** Permits must specify the species authorized to be taken and must be issued in accordance with the appropriate statutes and regulations. This information is needed for assurance that the applicant is aware of the status of species for which they are applying to take or import/export, and that the applicant is aware of the requirements under the appropriate Acts, including requirements for consultation under section 7 of the ESA. NMFS must determine that for enhancement purposes, the species or stock identified in the application is in need of enhancement for its survival or recovery and only animals and parts necessary for enhancement are taken. NMFS must also determine that any requested import or export will not result in taking of marine mammals beyond that authorized by the permit. Applicable regulations: 50 CFR 216.33(c)(2)(iii), 216.34 (a)(3) and (7), 216.36 (a)(1)(i), 216.41(b)(5) and (6), 222.308 (b)(6)(i and iv), and 222.308(c)(5) and (d)(1).

In addition, the applicant should be made aware that applicable import/export requirements must be met with regard to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) pursuant to U.S. Fish and Wildlife Service regulations.

***Attach a Literature Review File and Attach a References File:** The applicant must demonstrate whether the proposed activities are different from or build upon past research; whether the activities are unnecessarily duplicative and thus may operate to the disadvantage of the species; or whether the activities are necessary and would contribute to the conservation of the species. This information will be used with other components of the application to determine that the proposed activity will further a bona fide scientific research or enhancement purpose. Applicable regulations: 50 CFR 216.3, 216.41(b)(1) and 222.308(c)(4).

***Lethal Take:** This information is necessary to ensure that prohibitions and restrictions on the lethal take of protected species are taken into consideration. Under the MMPA, if lethal take is proposed, the applicant must demonstrate that non-lethal methods are not feasible. For depleted, endangered, or threatened species, the results must directly benefit that species or fulfill a critically important research need. The taking must be humane

and any permanent removal of a marine mammal from the wild must be consistent with any applicable quota established by the Office Director. The applicant must demonstrate that the take of marine mammals will not likely have a significant adverse impact on the species. For endangered marine mammals, the applicant must demonstrate that the activity will be conducted consistent with the purposes and policies set forth in section 2 of the ESA. Under the ESA, the applicant must describe how the species will be used and must demonstrate that the permit, if granted and exercised, will not operate to the disadvantage of the species and therefore must justify the lethal take of listed species. The applicant must also demonstrate that for ESA-listed species, whether the permit will further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species. Applicable regulations/statutes: 50 CFR 216.34(a)(1),(3), and (4); 216.41(b)(2 - 4) and (c)(1)(v); MMPA section 104(c)(3)(B); and 50 CFR 222.308(b)(4)(ii), (b)(6)(v), (c)(2), and (c)(4).

****Anticipated Effects on Animals and Measures to Minimize Negative Effects:*** This information is necessary to: (1) assess the environmental impacts of the proposed activity and conduct the appropriate level of analysis under NEPA, (2) determine whether the proposed activity is humane and does not present unnecessary risks to the health and welfare of marine mammals, (3) determine whether the proposed activity will have a significant adverse impact on the species or other components of the marine ecosystem, (4) determine the effects of the proposed activities on ESA-listed species and whether the permit, if issued, will operate to the disadvantage of such species, (5) determine whether appropriate monitoring will be conducted to adequately assess the effects of the permitted activities, and (6) prepare an initiation package and request consultation under section 7 of the ESA, as applicable. Applicable regulations: 50 CFR 216.33(c)(v) and (d)(i and iv), 216.34(a)(1) and (4), 216.41(b)(4), and 222.308(b)(11), (c)(2) and (c)(5).

****Resources Needed to Accomplish Objectives and Disposition of Tissue Samples:*** Applicants are required to demonstrate whether their expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application. If a live animal will be held captive or transported, the applicant's qualifications, facilities, and resources must be adequate for the proper care and maintenance of the marine mammal. Applicants are also required to indicate how they will dispose of, how they will store, or to where they will transfer remaining samples after analyses are completed. Applicable regulations: 50 CFR 216.34 (a)(5) and (6); 216.37(c); 50 CFR 222.308(b)(5)(ii), (iii), (v); 222.308(b)(6) and (c)(9-10).

****Public Availability of Product/Publications:*** MMPA regulations require that research results obtained under the authority of a special exception permit are published or otherwise made available to the scientific community in a reasonable period of time. This information is also used to determine that the proposed activity is for bona fide research purposes. Applicable regulations: 50 CFR 216.41(c)(ii) and 222.308(c)(4).

Captive Information

Applicants are required to address the following questions, *as applicable*.

- (a) Why removal from the wild is necessary and why animals cannot be obtained from captive or rehabilitated stock.

NMFS regulations allow for the use of stranded rehabilitated marine mammals for special exception purposes in lieu of taking animals from the wild, which protects wild stocks from impacts of removing individuals from the population. Any permanent removal of a marine mammal from the wild must be consistent with any applicable quota established by the Office Director. Applicants must justify the need for use of an endangered species and whether an alternative species can be used. Applicable regulations: 50 CFR 216.27(b)(4), 216.41(b)(3), and 222.308(b)(4).

- (b) The name and location of the rehabilitation facility where animals will be tested.

The applicant must provide the location where the take will occur (see other Location sections in this document for location justification and regulatory citations). NMFS also needs this information to ensure authorization needed under 50 CFR 216.27(c) has been obtained as it relates to the disposition of rehabilitated marine mammals for special exception permit purposes. NMFS also needs this information to determine a rehabilitation facility's compliance with their Stranding Agreement and applicable NMFS guidelines. This question is not applicable to non-mammal ESA-listed species (research on sea turtles in rehabilitation would require a USFWS permit; no other non-mammal ESA-listed species is rehabilitated).

- (c) The name and location of the captive facility holding the subject animals and, where possible, the identity of specific animals.

The applicant must provide the location where the take will occur (see other Location sections in this document for location justification and regulatory citations) and the age/sex and species (see Project Description justification and regulatory citations). This information is also used for marine mammal inventory purposes.

- (d) A copy of any license or registration issued by the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), any outstanding variances granted, and the most recent APHIS inspection report.

The APHIS is responsible under the Animal Welfare Act (AWA) for captive marine mammals and has established regulations and standards, "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (9 CFR Part 3, Subpart E). Information regarding the appropriate licensure or registration, variances, and standing with APHIS is used to determine if the applicant's facilities are adequate for the proper care and maintenance of a

marine mammal. For any research involving captive marine mammals, the applicant must provide supporting documentation. If marine mammals are on public display incidental to research or enhancement, they must be held consistent with AWA requirements and standards. APHIS does not regulate activities involving fish, invertebrates, or reptiles. Applicable regulations: 50 CFR 216.34(a)(6); 216.41(a)(2), (b)(6)(v), (c)(1)(vi).

- (e) The proposal submitted to the appropriate Institutional Animal Care and Use Committee (IACUC) established under the AWA, the IACUC approval, and any comments and recommendations of the IACUC.

This information is used to support a determination that the permitted activities will be conducted in a humane manner. Applicable regulations/statutes: 50 CFR 216.34(a)(1) and MMPA section 104(b)(1)(B).

- (f) A written statement from the responsible veterinarian or expert certifying that the facilities, methods of care and maintenance, and methods of transport will be adequate to ensure the well-being of the animals *and, for marine mammals*, will comply with all care and transport standards established under the AWA.

This information is used to determine if the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of protected species. For any research involving captive marine mammals, the applicant must provide supporting documentation. If marine mammals are on public display incidental to research or enhancement, they must be held consistent with AWA requirements and standards. For ESA-listed species, the applicant must provide a statement from a licensed veterinarian or recognized expert verifying methods of transport and maintenance are adequate to provide for the well-being of the animals. Applicable regulations: 50 CFR 216.34(a)(6); 216.41(a)(2), (b)(6)(v), (c)(1)(vi); and 222.308(b)(7)(vi).

- (g) *For ESA-listed species*: Describe the care and maintenance of the animals, including a complete description of the facilities where they will be maintained, how they will be maintained, and the qualifications of husbandry staff.

Under the ESA, a complete description of how listed species will be maintained in captivity is required to ensure the applicant's qualifications and facilities are appropriate for the proper care and maintenance of the species. This information is also needed to determine whether the permit would further a bona fide and necessary scientific purpose or enhance the propagation or survival of the affected species, and to determine that the resources are adequate for the applicant to successfully accomplish the objectives stated in the application. For scientific research involving captive marine mammals, the applicant must submit supporting documentation. For enhancement permits involving marine mammals, the proposed captive maintenance must contribute directly to the survival or

recovery of the species. Applicable regulations/statutes: 50 CFR 222.308(b)(8) and 216.41(a)(2) and (b)(6)(iv) and MMPA section 104(c)(4).

- (h) Whether a captive breeding program will be established and, if so, justification.

This information is used to describe the proposed action as it relates to research or enhancement and to determine whether proposed breeding is consistent with a recovery plan. Applicable regulations: 216.41(b)(6) and 222.308(b)(9).

- (i) Indicate the disposition of captive animals at the termination of research or enhancement activities. This information is necessary to determine if the subject animals would be euthanized or released to the wild; or whether the animals would be transferred to another disposition (e.g., public display), or kept in a long-term research or enhancement program, and to permit accordingly. Any marine mammals held in captivity under an enhancement permit must be returned to the wild as soon as feasible; justification for other disposition must be provided. Captive marine mammals may not be released to the wild unless authorized by a scientific research or enhancement permit. Applicable regulations/statutes: 50 CFR 216.35 (e), 216.41(c)(2) and MMPA section 104(c)(4)(B); and 50 CFR 222.308(b)(9) and (c)(9).
- (j) If release of captive animals to the wild is proposed, state the length of time the animals will be held, no matter how temporary, and describe the protocols for the release, including mitigation and monitoring protocols.

This information is necessary to ensure there will be no disease transmission between released animals and the wild population; that genetic exchange has been taken into consideration; and that the animals have necessary skills to survive in the wild. Such information is necessary to ensure that the permitted activity: (1) is humane and does not present any unnecessary risks to the health and welfare of marine mammals; (2) will not have a significant adverse impact on the species or stock; and (3) will not operate to the disadvantage of an ESA-listed species. Release of captive marine mammals must be conducted pursuant to a scientific research or enhancement permit. Applicable regulations: 50 CFR 216.33(e)(4)(ii), 216.34(a)(1) and (4), 216.35(e), and 222.308(c)(2).

Project Locations

Permits must specify locations of authorized take or import/export. Necessary to determine if work will be conducted in U.S., and therefore, whether a permit is needed. This information is also necessary for considering impacts to protected species and for conducting the appropriate environmental analyses under NEPA, MMPA, and ESA. Applicable regulations/statutes: 50 CFR 216.33(a), 216.36(a)(1)(iii), and MMPA section 104(b)(2)(B); and 50 CFR 222.308(b)(6)(i) and (iv), 222.308(d)(2).

Take Information

Applicants are required to enumerate the number of protected species, by species/stock, age, sex, location, and manner in the form of a table. This table is used to verify the number of animals requested to be taken as described in the narrative portion of the project description and is used to create the take table for the permit, once issued. Further justification and the applicable regulations are included above under “Project Description.”

National Environmental Policy Act (NEPA) Considerations

In addition to information contained in other sections of the application as noted, the questions posed in this section of the application are necessary considerations under NEPA. These questions address such things as whether new or novel techniques will be used and adopted by others (i.e., if a precedent will be set); whether there is risk from hazardous substances or infectious agents; what impacts may occur to unique or protected geographic areas, including refuges, sanctuaries, or critical habitats; whether the work could cause loss or destruction of scientific, cultural, or historic resources; and whether there could be introduction or spread of non-indigenous or invasive species as a result of the permitted activity. Applicable regulations: NEPA CEQ regulations.

Project Contacts

This section is necessary for identification and contact purposes. A Permit Holder is ultimately responsible for all activities of individuals operating under the permit. A Responsible Party must be named if the applicant is an organization. Special exception permits are not transferable. The Principal Investigator and Co-investigators share responsibility in the absence of the Permit Holder. These persons will be named on the permit as responsible for the authorized activities and are subject to enforcement actions. Personnel involved in the authorized activities must be reasonable in number and limited to those individuals who perform a necessary function and support personnel included for purposes of training or as back up. Applicable regulations: 50 CFR 216.33, 216.35(i), 216.41(a), 216.41(c)(1)(iii-iv), and 222.308(b)(3).

Qualifications and Experience: Necessary to determine whether the individuals operating under the permit are qualified to successfully accomplish the objectives, conduct bona fide research or enhancement activities, carry out the specific types of take, and properly care for and maintain captive animals (as applicable). Individuals conducting activities authorized under a permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications. Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed. Applicable regulations: 50 CFR 216.34(a)(5-6), 216.35(f-h), 222.308(b)(6)(vi), 222.308(b)(8)(v), and 222.308(c)(11).

Submit Application (Authentication and Certification)

Applicants must authenticate their identity by signature and certify that the information in the application is accurate, under penalties of the ESA and MMPA. Permits must be applied for in good faith. Applicable regulations: 50 CFR 216.33(a), 216.33(e)(4)(i), 222.302(a), 222.303(f)(1), 222.308(b)(12-13), and 222.308(c)(1). Also required by 18 U.S.C. 1001.

Requesting a Modification

Modification Request Questions

This information is necessary to identify what type of modification is being requested and what processing steps are involved. The selections made on this screen dictate what fields are available for applicants to edit on the screens that follow. Applicants are required to provide information consistent with that required for a new permit (e.g., hypothesis, methods, effects and mitigation), and the justification for requiring this information from applicants is the same as described above, as applicable to the modification being requested. Applicable regulations: 50 CFR 216.39 and 222.306.

Reports

Section 104(c) of the MMPA requires "...any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock [to] furnish to the Secretary a report on all activities carried out by him pursuant to that authority." Permit holders are required to submit reports in accordance with the requirements established in their permits. Reports are of several types and may be submitted annually or on occasion. For scientific research and enhancement permits, the annual report is a summary of all research and enhancement activities conducted during the preceding year. Annual reports are necessary for NMFS to determine that the permit holder is abiding by the conditions of the permit, to track numbers of animals taken and review the effects of the authorized take on the species. Reports are also necessary to determine whether the permitted research or enhancement activities met stated objectives and determine whether the research findings were published or otherwise made available to the public or scientific community. Applicable regulations: 50 CFR 216.27, 216.38, 216.45, 222.301(h) and 222.308(b)(11).

National Marine Fisheries Service
Marine Mammal and Endangered
Species Research and Enhancement
Permits

National Marine Fisheries Service Marine Mammal and Endangered Species Research and Enhancement Permits

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Background

This chapter describes how to use APPS to apply on-line for Marine Mammal Protection Act and Endangered Species Act scientific research and enhancement permits for National Marine Fisheries Service (NMFS) protected species, including:

- Cetaceans;
- Pinnipeds (excluding walrus);
- Sea turtles (in water);
- Shortnose sturgeon;
- Smalltooth sawfish; and
- White and black abalone.

Under section 104 of the Marine Mammal Protection Act of 1972 (MMPA) and section 10(a)(1)(A) of the Endangered Species Act of 1973 (ESA), NMFS may issue permits for scientific research purposes or to enhance the propagation, survival, or recovery of protected marine species. Under the Fur Seal Act of 1966 (FSA), NMFS may issue permits for research on fur seals of the North Pacific.

Additional state laws or regulations more restrictive than the MMPA or ESA may also apply to your activities and you are responsible for securing any necessary state permits or authorizations.

Possession of a permit is a privilege. NMFS must evaluate issuance of permits in consideration of its duties to protect and recover listed species.

Permits may be issued for up to five years and will include conditions necessary to mitigate and monitor the impacts of the proposed activities.

Please note, **not all MMPA and ESA permit applications are currently available on APPS**. You will need to use separate application instructions and apply by mail if you require the following permits/authorizations:

- MMPA General Authorization (GA)
- MMPA Commercial/Educational Photography Permit
- MMPA Public Display Permit
- MMPA Incidental Harassment Authorization (IHA)
- MMPA Incidental Take Letter of Authorization (LOA)
- MMPA Pre-Act Parts Authorization
- ESA Section 10(a)(1)(B) Incidental Take Permit

For more information on applying for these permits, click the “Permit Types” link in the APPS Features box, use the Pre-Application Guide in APPS (see below), or visit <http://www.nmfs.noaa.gov/pr/permits/types.htm>.

Overview

When to Apply

Target Species	Non-target species	When to apply
Non-ESA listed marine mammals	No ESA-listed species or designated critical habitat will be adversely affected by the research activities	At least 6 months prior to when you want to begin research/enhancement activities
Non-ESA listed marine mammals	ESA-listed species or designated critical habitat may be adversely affected by the research activities	At least one year prior to when you want to begin research/enhancement activities
ESA-listed species (marine mammals and other taxa)		At least one year prior to when you want to begin research/enhancement activities

Processing

Once we receive a **complete** permit application, it is subject to a mandatory 30-day public comment period. We concurrently send the application to the appropriate NMFS Regional and Science Center Offices, subject matter experts, and the Marine Mammal Commission for review and comment as applicable.

All permits must be analyzed under the National Environmental Policy Act (NEPA). An environmental assessment (EA) or environmental impact statement (EIS) is necessary if proposed research or enhancement activities:

- are the subject of public controversy based on potential environmental consequences,
- have uncertain environmental impacts or unknown risks,
- may result in cumulatively significant impacts, or
- may have an adverse effect upon endangered or threatened species or their habitats (note: any harassment or take of these species is considered an adverse effect).

If an application does not contain sufficient information on the environmental impact of the proposed activity to determine whether an EA/EIS is necessary, or if the information is insufficient to complete such analyses, the application may be returned to the applicant or processing will be prolonged.

As applicable, NMFS must request consultation with the following agencies on the potential effects of certain proposed activities, as listed below:

Agency	Subject of Consultation
NMFS Endangered Species Division	ESA-listed species and designated critical habitat
NMFS Office of Habitat Conservation	Essential Fish Habitat (EFH)
NOAA National Ocean Service	National Marine Sanctuaries
U.S. Fish and Wildlife Service	ESA-listed species and designated critical habitat

Issues that arise during these consultations will prolong the permit process.

Pre-application Guide (PAG)

Refer to [Chapter 1](#) for guidance on filling out the PAG, which is required prior to applying for a permit using APPS. Upon completing the PAG, the “Results” page will indicate the type of NMFS permit required. Please note the Questionnaire No. for future reference.

You have the option at this point to start an application or cancel. If you select cancel, you will have to complete another PAG before starting your application. If you are satisfied with the results of the PAG, click the link to start an application.

If you have questions about the results of the PAG or about completing your application, please call the Permits Division at 301-713-2289.

General Guidance for Filling out an Application

Refer to [Chapter 2](#) (“How to Use the System”) for basic instructions for using APPS, including system requirements, creating a new account, using the “portfolio” page, detailed navigation guidance, and information on saving and submitting your application.

APPS will assign your application a file number. Please reference this file number in correspondence about your project (e.g., in email subject headings). When starting from your portfolio, clicking on the link of your application file number under the “File Number” column will take you to the application.

General guidelines

- **Data is not saved automatically.** APPS will display a warning message and will **time out after 20 minutes** without any activity. To avoid loss of data, save the application before the system times out. **Save frequently** using the “Save” link at the top of your application. You will also be prompted to save each page when you click on the navigation links. Select “Save” to save new data, or “Cancel” to continue on to the next screen without saving.
- **You do not have to complete an application in one session.** You may save the application as a draft as long as you save before logging off or before the system “times out” and logs you off due to inactivity. The draft application may be accessed later from your portfolio and will remain in draft mode until you complete the required fields and submit the application.
- An asterisk (*) marks a field that is required.
- Some text boxes have character limits, which includes spaces.
- You may cut and paste from other documents (e.g., Word), but special characters and formatting will be lost.

Navigation guidelines

- **Do not use your web browser’s navigation buttons.** Doing so may cause you to lose information. Use the navigation links “< Previous” or “Next >” or the breadcrumbs at the top of the APPS screen, as described below and in [Chapter 2](#).
- Two options are available to **navigate through the application sections**:
 - **Breadcrumb links** (represented by the title of each major section of the application) allow you to jump to other pages in the application **without having to complete the required information** prior to leaving a page (i.e., you can skip a section and come back to it later).

- **APPS navigation links** (“< Previous,” “Reset,” or “Next >”) on the right side of the pages require you to go to each screen in a sequential order, and **you are required to enter all information** prior to leaving a page.

Application Layout

New applications will open in draft or editing mode. You will navigate through a series of screens to enter information in the following sections of the application:

1) Project Information, Project Description, and Project Supplemental Information

– this section requires specific information about your project, such as the duration and timing of your work, hypothesis/justification, description of methods, and other information.

2) Location and Take Information – this section requires information about the places you are requesting to work, the numbers and types of protected species you expect to take or import, and the methodologies you will use to conduct your research or enhancement activities.

3) NEPA – this section requires information about how your activities would result in impacts on the environment, including the physical and biological aspects of the environment.

4) Project Contacts – this section requires information on the Applicant/Permit Holder, Principal Investigator, Co-investigators, or others that will be working under the permit.

5) Submit – this section allows you to view your completed application and submit it to the Permits Division for review and processing. APPS will run checks before you can “Submit” an application to ensure you have completed all required screens or data fields. You will go through steps to authenticate your identity and certify the contents of your application prior to submitting it, which requires you to provide a signature to the Permits Division.

Completing an Application using APPS

Give Complete Information

Please provide complete and specific information according to the instructions in this document. APPS will not allow you to submit an application if one of the required fields is not filled out. **The Permits Division cannot process applications that do not include all of the required information.** We will return incomplete applications with explanation or request additional information. If we request additional information and do not receive it within 60 days, we will withdraw your application. Please note the following:

- Your application must be a stand-alone document and must clearly describe all proposed activities even when you reference published literature.
- When a question does not apply, please indicate “Not Applicable” or “N/A” and provide a brief explanation as to why the question is not applicable.
- Please avoid the use of technical jargon when possible because your application will be available to the public for review.
- You are encouraged to contact the Permits Division at 301-713-2289 with questions in advance of submitting your application.

Project Information Page

File Number

This number is automatically generated by APPS and cannot be changed. Use this number in correspondence about your application.

***Project Title** (enter up to 255 characters)

Describe the project as concisely and descriptively as possible. Include the species (or taxa if multiple species), the study’s geographic range, and purpose. For example:

- *“Characterizing the Population Structure, Forging Ecology, and Movement Patterns of Green Sea Turtles in the Gulf of Mexico.”*

Note: If working on a draft application, we strongly recommend you enter a project title before logging out of the system.

***Project Status**

Project status (“New” or “Renewal”) is automatically selected based on your answers in the pre-application guide (PAG). Do not change this field.

Previous Federal or state permit #

If applicable, please enter your most recent NMFS permit number. If you have/had more than one permit, enter the permit most closely related to this application.

Note: State permit numbers are only applicable for Pacific marine and anadromous fish applications.

****Permits Requested***

One or more items will be listed based on your answers in the PAG. If the options listed are incorrect, please call the Permits Division at 301-713-2289 for assistance.

****Where will the activities occur?***

One or more general locations will be listed based on your answers in the PAG. If a location is incorrect, please call the Permits Division at 301-713-2289 for assistance.

Note: You will have the opportunity to provide more specific location information on subsequent pages.

****Research Timeframe***

Enter the proposed start and end dates of the entire project in the following format: MM/DD/YYYY. Please review the “When to Apply” section above and provide realistic dates based on processing time.

- The start date must not be prior to the date you successfully submit the application.
- The end date must be within five years of the start date.
- You may enter more specifics on your project dates/field seasons under “Sampling Season/Project Duration” (see below).

****Sampling Season/Project Duration*** (enter up to 1,000 characters)

Describe the annual sampling season(s) and the duration of the project. Include the months of the year and frequency of fieldwork/sampling (e.g., how many times per year and how frequently will you sample?).

If your research extends beyond five years, or is a continuation of previously authorized research, enter information here about when the research began and when you expect it to end.

***Abstract** (enter up to 2,000 characters)

Provide a brief summary (approximately 200 words) of the proposed research and/or enhancement project. We will publish this summary in the *Federal Register* Notice of Receipt that initiates the 30-day public comment period. The summary should include **concise** statements of the following information:

- Purpose of the research or enhancement activity;
- Target species (common and scientific names);
- Type of take activities (e.g., capture, biopsy sampling), import and/or export;
- Numbers of animals to be taken for each activity or number of animals from which specimens will be imported and/or exported, by species or taxa (over a specified time, e.g., per year);
- Numbers and kinds of non-target species, including those listed under the ESA, that may be taken incidentally;
- Specific geographic location(s), including locations from which animals or specimens will be imported or to which they will be exported, if applicable; and
- Requested duration of the permit (e.g., five years).

After you have completed this page, save and click “Next >” or click the “Description” breadcrumb at the top of the APPS page to move to the next page.

Project Description Page

***Project Purpose: Hypothesis/Objectives and Justification** (no text limit)

Answer the following questions:

- What are your objectives?
- What is the expected significance of your proposed activities?
- For research, what is the hypothesis being tested?
- For enhancement, how will your activities enhance the survival or recovery of the species in the wild?

Describe how your proposed work is different from, builds upon, or duplicates past research or enhancement activities.

Describe why your work cannot be accomplished without taking marine mammals or protected species.

Justify your sample size. Include a power analysis or other sample size estimation to determine whether the sample size is sufficient to provide statistically significant or otherwise robust results appropriate for your research study.

Justify your need to sample specific sex, age class, sub-populations, etc.

For each species, demonstrate how your research activity would contribute to the basic knowledge of the biology or ecology of the species, or how your activity will identify, evaluate or resolve conservation problems.

Explain the role of each Co-investigator (CI).

As applicable, also address the following:

For **ESA-listed and MMPA-depleted** species:

- Why must your study involve ESA-listed or depleted species? Discuss the use of possible alternatives (e.g., surrogate non-ESA listed species).
- How will your project contribute to the objectives identified in the species' recovery or conservation plan? Please be sure to identify specific priorities of these plans.
- Does your project have broader significance than your individual goals? For example, does your project respond to recommendations (other than those listed in a recovery or conservation plan) of a scientific body charged with management of the species? If so, describe.
- If there is no recovery or conservation plan, how will your project otherwise contribute to conservation and/or recovery of the species?
- How will your research directly benefit the species or fulfill a critically important research need?
- How will your enhancement activities contribute to maintaining or increasing distribution or abundance, enhance the health or welfare of the species, or ensure the survival or recovery of the species in the wild?
- Will captive maintenance for enhancement maintain a viable gene pool, increase productivity, provide necessary biological information, or establish animal reserves?
 - How does the benefit of removing animals from the wild into captivity outweigh alternatives that do not require removal from the wild?

- What plans are in place for returning animals and any offspring to the wild? If animals are going to remain in permanent captivity, additional justification is required.

***Project Description** (no text limit)

This section should clearly describe the methods you will use, the number of animals you will take, and the locations in which you will take them. This section should provide the reader with a clear picture of what will systematically happen during a typical day/field season of research or enhancement activities.

Note: Background information and literature review will be requested in a later section.

Describe the **number of individuals, by species, sex, age class, manner, and location** in which you will take¹ animals and animal parts/specimens over a specified period (annually or per field season if less than one year).

If you will take the same animals **in more than one manner**, list the number of animals and all procedures that you would conduct.

- Example: capture, blood sample, biopsy, and flipper tag 25 adult male and 25 adult female (non-pregnant and non-lactating) individuals annually during non-breeding season.

If individuals will be **taken more than once** (e.g., recapture for instrument retrieval or multiple tagging attempts), indicate the frequency and type of take activity per individual per year or per field season if less than one year.

Provide **detailed methods** for each take activity, including but **not limited to** descriptions of the following:

- Platform types (vessel or aircraft description)
- Aerial and vessel survey type and routes (attach figure if possible)
- Approach distances (by aerial, vessel, or ground)
- Approach techniques (speed, direction in relation to animals)
- Photo-identification (techniques and analysis)
- Capture techniques (hand, net [type and mesh size], cage [type and dimensions])

¹ By regulation, a take under the MMPA means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

Under the ESA, a take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to do any of the preceding.

- Handling/restraint (methods and number of persons to restrain, maximum time)
- Sedation/anesthesia (type, route/site, dosage, duration, reversal/other drugs)
- Marking (flipper and PIT tagging, branding, bleach/other temporary marking)
- Instrumentation (attachment method, types of sensors, dimensions, weight, battery life, duration of attachment)
- Biological sampling (type, volume/size, site, analysis, shipment, storage)
- Acoustic sampling (passive recording or auditory evoked potential) or acoustic playbacks (frequency, source level, signal duration, duty cycle, and energy output).

Please make sure your methods are detailed enough for us to evaluate potential effects. Refer to [Appendix VIII](#) for guidance on what level of detail is required.

Cite **references** for the methods where applicable, but do not substitute a literature citation in lieu of a complete description of the methods.

On the “Supplemental Information” page, you may attach files containing **figures or photographs to illustrate** your methods (e.g., tags and tag attachment, nets and net deployment). See below for instructions on attaching files.

Include the **purpose of each take activity** (including the purpose of specific samples taken). How do these take activities relate to meeting your objectives?

Indicate the **estimated number and type of non-target species** that you may affect each year, and the manner in which you may affect them during your research. This includes but is not limited to marine mammals, ESA-listed species, sea birds, sharks, plants, etc. If you were to encounter a non-target species in the same area of your study but you do not expect to affect them in any way, please describe why and any actions you will take to prevent impacts (e.g., not in area during time of study; would not approach closer than 100 meters; would halt operations until non-target species moved out of study area).

Describe how your proposed activities coincide with or avoid sensitive biological periods such as reproductive seasons and maternal care of both target and non-target species.

For import and export activities, answer in detail the following:

- How will the animals or specimens/parts to be imported be taken in the country of origin?
- If samples will be obtained from dead animals, how did the animals die (e.g., subsistence hunt)?
- What is the authorizing government agency for the legal collection of animals or specimens in the country of origin? Be prepared to provide documentation regarding the legality of the take in the country of origin for your annual reports.

- What are the shipment/transport methods, including safe handling protocols?
- What are the methods for sample preservation, analysis, and curation (for samples not destroyed in analyses), including safety protocols for laboratory work?
- If an import would be necessary for the protection or welfare of a live marine mammal, discuss the circumstances involved and any alternatives considered.

For exports of living marine mammals from the U.S., the appropriate agency of the foreign government must certify that:

- The information in the application is accurate;
- The laws and regulations of the foreign government involved allow enforcement of the terms and conditions of the permit; and
- The foreign government involved will afford comity to any permit amendment, modification, suspension, or revocation decisions.

After you have completed this page, save and click “Next >” or click the “Supplemental” breadcrumb at the top of the APPS page to move to the next page.

Project Supplemental Information Page

Attach a Supplemental Information File

If you do not have enough room to answer any of the questions in this or the other sections, you may attach files to complete a section or sections. There are additional areas in the application to attach maps, grant proposals, etc.

- To attach a file, use the “click here to attach a supplemental file” link.
- An **MS Word** file is the preferred format, but formats such as PDF, MS Excel, Word Perfect, and ZIP files are also acceptable.
- An **attachment may not be larger than 10 MB and you may attach up to 10 files**. If you have a larger document, reduce the size by removing material that is not essential for the review of your application.
- Once you have attached a file, the screen will display text indicating that a file is attached. You may need to refresh the screen to see this after hitting “save.”

****Status of the Affected Species*** (enter up to 2,000 characters)

As applicable, indicate the status of each target species or stock as follows:

- ESA - threatened or endangered
- MMPA - depleted or strategic
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) - Appendix I, I, or III

Species information is available at the following web sites:

<http://www.nmfs.noaa.gov/pr/species/>
<http://www.fws.gov/>
<http://www.cites.org/>

****Attach a Literature Review File***

Attach a background literature review for your project by clicking on the “Click here to attach a Literature Review file” link and follow the above instructions.

This document should provide a succinct review of relevant information published by accredited scholars and researchers, including you, and should include appropriate citations. Your purpose is to convey to the reader what knowledge and ideas have been established related to your proposed research/enhancement, and what the strengths and weaknesses are. If you have previously held a permit, discuss how your past findings have contributed to the body of knowledge and how they relate to your proposed objectives.

****Lethal Take*** (enter up to 800 characters)

If you **do not** expect to kill or seriously injure any animals, intentionally or unintentionally, click the “Not Applicable” check box and leave the larger text box blank.

If **intentional** lethal take is involved, provide an explanation of why a non-lethal method is not feasible or why lethal take is unavoidable. For ESA-listed or MMPA depleted species, also describe how the results will directly benefit the species or fulfill a critically important research need.

- Provide methods of lethal take, number of animals to be taken per year, and protocols for tissue collection, analysis, and carcass disposal if not previously described in the “Project Description” section.

If **unintentional** mortality or serious injury² is possible incidental to, or as a result of, the proposed activities, indicate the following if not previously described in the “Project Description” section:

- Maximum number of animals from each species that could die or be seriously injured per year and how you arrived at that number;

² For marine mammals, serious injury is defined by regulation as any injury that will likely result in mortality.

- Potential ways that animals may die incidental to the proposed activities; and
- Protocols for tissue collection, analysis, and carcass disposal.

Note: Unintentional mortality refers not only to a death during research, but also to those that succumb at a later time (e.g., death due to effects of stress from handling, adverse reactions to drugs, complications from a pre-existing condition, or abandonment of dependent young).

***Anticipated Effects on Animals** (no text limit; refer to [Appendix VIII](#) for guidance on what level of detail is required)

- What are the anticipated effects of each of the activities alone or cumulatively on the behavior and physiology of the target animals? How will animals react to your actions and what are the consequences of those reactions? Identify both short- and long-term potential effects.

Note: If you have conducted this work previously, please clearly describe and quantitatively summarize the types of reactions of animals from past research. Include citations for any relevant references and be prepared to provide copies if requested. Annual permit reports and other non-published works are acceptable citations.

- What are the anticipated effects on the population as a whole? On what is your determination based?
- Summarize any mortalities that have occurred during the previous five years of research or enhancement activities conducted by you using the same or similar techniques, including circumstances involved and cause of death.
- Describe how conspecifics or non-target species in the study area may react to or otherwise be affected by your activities (e.g., will you encounter them on your way to or from the study site? How will you avoid harassment?).

***Measures to Minimize Negative Effects** (no text limit; refer to [Appendix VIII](#) for guidance on what level of detail is required)

- For each activity, what measures will you take to minimize impacts to wildlife? Provide information for both target and non-target species (e.g., plants, fish, coral). Describe measures you will implement to ensure your activities are conducted in a humane manner, with minimal disturbance, stress, and harm to the subject animals. Are you proposing to use methods that will have the least potential for pain and stress?

- Indicate any short- and long-term post-procedure monitoring you would conduct to evaluate the effects of your activities and/or to ensure animals have recovered.
- What efforts will you make to collaborate or coordinate research with others in your study area? Explain how this will occur and how it will minimize impacts. For example, will it involve sharing resources, samples or data; timing surveys, etc.?
- If the proposed activities may cause stress, discomfort, pain, suffering, injury, or mortality, you must explain why there are no feasible alternative methods to obtain the desired data.

Note: Where an IACUC (Institutional Animal Care and Use Committee) is required, include the signed approvals and comments. You may attach these files using the “Attach a Supplemental Information File” link at the top of the “Project Supplemental Information” page (see above). If the protocols have not been approved, indicate the status. Applicants are encouraged to include the protocols submitted to and approved by their IACUC in addition to approval letters in support of their application.

For applications involving captive care of marine mammals, there is a separate section to attach your IACUC documents.

Attach a References File

If your application contains citations to published work, you must include a list of references. References contain bibliographic information that would allow a reader to obtain a copy of the referenced work.

Note: Referenced materials must be made available to the Permits Division upon request, as needed for evaluation of the application, or preparation of any necessary ESA and/or NEPA analyses. Note that all documents referenced in support of your application must be available to the public upon request. Do not reference confidential documents, or other information you are not willing to provide to the public at the time your application is submitted.

***Resources Needed to Accomplish Objectives** (enter up to 800 characters and attach file if necessary)

Explain how your expertise, facilities, and resources are adequate to successfully accomplish the objectives and activities stated in your application.

Include the name and address of sponsors, cooperating institutions/researchers, or contractors, if not listed as Co-investigators on the application, and clearly indicate their role.

If the proposed take activities will be conducted by a contractor, provide a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the taking. Attach copies of any relevant formal research proposals, contracts, or letters of agreement that would demonstrate the financial or logistical resources available to you to conduct and complete the proposed activities.

Indicate whether you have applied for, secured, or will apply for other federal, local, or state permission to conduct your proposed work, and what those approvals include.

Note: You may add an attachment here for funding proposals, letters of agreements, lists of cooperators and their roles, etc.

****Disposition of Tissue Samples*** (enter up to 800 characters)

If you will not collect, receive, possess, transport, or import/export tissue samples, click the “Not Applicable” check box and leave the text box blank.

If this section is applicable, provide a description of the disposition of any parts or samples remaining after the research or enhancement activities are complete. If you have made arrangements with a museum or other institutional collection to ensure that remaining tissues will be available for scientific research or enhancement purposes, include information on where the samples will be stored, transferred, and how/when/where they will be disposed. Include contact information for each of researchers, laboratories, museums, and/or institutional collections that would receive these tissue samples or specimens. If you will not retain or transfer samples, state whether samples will be consumed in analysis or will be destroyed.

****Public Availability of Product/Publications*** (enter up to 800 characters)

Describe the end product(s) of your proposed research and how they will be made available to the public.

After you have completed this page, save and click “Next >” or click the “Location/Take” breadcrumb at the top of the APPS page to move to the next page.

Captive Information Pages

Based on your responses to the PAG, you may be required to provide additional information on animals in captivity (permanent or temporary), including removing animals from the wild into captivity and research or enhancement on captive or rehabilitating animals. ***As applicable, address the following:***

- (a) Explain why removal from the wild is necessary and why you cannot obtain suitable animals from captive or rehabilitated stock. (Enter up to 2,000 characters.)
- (b) If the source stock is to be beached/stranded marine mammals undergoing rehabilitation, indicate the name and location of the rehabilitation facility. (Enter up to 1,000 characters.)
- (c) If the source stock is from animals already in captivity (other than animals in rehabilitation) indicate the name and location of the facility and, where possible, identify the specific animals (by NOAA ID number if applicable) to be involved in the proposed activity. (Enter up to 1,000 characters.)
- (d) Include a copy of any license or registration issued by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, any outstanding variances granted, and the most recent APHIS inspection report. (You must attach a file here.)
- (e) Include the proposal submitted to the appropriate Institutional Animal Care and Use Committee (IACUC) established under the Animal Welfare Act (AWA), the IACUC approval, and any comments and recommendations of the IACUC. (You may attach a file here.)
- (f) Provide a written statement from the responsible veterinarian or expert certifying that the facilities, methods of care and maintenance, and methods of transport will be adequate to ensure the well-being of the animals *and, for marine mammals*, will comply with all care and transport standards established under the AWA. (You must attach a file here.)
- (g) *For ESA-listed species:* Describe the care and maintenance of the animals, including a complete description of the facilities where they will be maintained. This includes the dimensions of the pools or other holding facilities; the number, sex, and age of animals by species to be held in each; the water supply, amount, and quality; the diet, amount and type; sanitation practices; and qualifications and experience of the husbandry staff.
- (h) Indicate whether a captive breeding program will be established and, if so, provide justification in accordance with the species conservation or recovery plan as applicable for enhancement activities. *For ESA-listed species*, indicate if you

are willing to participate in a captive breeding program if requested by NMFS. (You may enter up to 1,800 characters.)

- (i) Indicate the disposition of captive animals at the termination of research or enhancement activities. (You may enter up to 1,800 characters.)
- (j) If release of captive animals to the wild is proposed, state the length of time the animals will be held, no matter how temporary, and describe the protocols for the release, including post-release monitoring protocols. Include in the release protocol mitigation for the following:
 - Disease transmission between released animals and the wild population;
 - Potential genetic exchanges between introduced and endemic stocks;
 - Ability of the released animals to forage and protect themselves from predators; and
 - Elimination of behavioral patterns acquired during captivity that could prove detrimental to the released animals or the social structure of local populations.

Project Locations and Take Information Pages

Overview

On the main “Project Locations and Take Information” page, you can describe your location, add new locations, edit or delete existing locations, add or edit take information, and view your defined locations.

The “Project Locations and Take Information” page will first prompt you to “Add New Location” and this will allow you to provide more information about where you will be working, based on the results of your PAG.

Once you have entered one or more locations, the lower part of the “Project Location and Take Information” page will display them. You will then have the option of adding another location, editing or deleting a location, or adding/editing the take information for a location. You will use the “Take Information” page to describe the species you will encounter and the procedures you will conduct at each location.

How to Add a New Location

Follow these sequential steps to add location information:

- 1) **Add New Location**: Click on this button to add a location and enter that location information. This will take you to a “Project Location Information” page.



*You must enter **multiple locations** if you will be working in different places (e.g., multiple oceans or rivers). You will enter each location **separately** and each will have an affiliated take table.*

- 2) ***Select the general area:** Next, use the drop-down menu to choose a general area where you will be working (this may be automatically populated based on information in the PAG). You can only enter one general area at a time.

Note: If you are requesting to **receive or import/export parts** of animals, **select the “Parts” option as your location** and enter country of import/location of sample origin, and to where samples will be shipped/exported in the location details section.

If you are requesting to **work with captive animals**, including those in rehabilitation, select the **“Captivity” option as your location** and enter names of captive facilities in the location details section. You will provide more details in the “Captive Information” section, described above.

Please note that NMFS does not have jurisdiction in the **territorial** waters of another country and therefore cannot authorize the take of protected species in those waters. For U.S. citizens, activities beyond territorial waters are considered to occur on the high seas and need coverage by a NMFS permit.

- 3) ***Select the state(s):** If applicable, this second drop down menu will be visible. Choose all applicable states for the general area by holding down the Control key and clicking on all applicable states.



If the correct geographic choices do not show up, please contact the Permits Division at 301-713-2289.

- 4) **Enter Location Details:** Click this button. Enter information on this page as it applies (disregard any non-applicable fields). Use the “Location Description” box (up to 255 characters) to briefly describe your study for each take table. Information on this page includes:

- Under “Waterbody,” enter names of rivers, estuaries, bays, etc.
- Latitude and longitude of your study area
- River miles (“Begin Mile” and “End Mile”)
- Limits of your study area (e.g., to the U.S. EEZ, to the edge of the continental shelf, to 50m depth)

- Names of land masses where research will occur (e.g., islands, rookeries)
- 5) **Attach File:** Click on this link to attach maps or other information to provide detailed descriptions about the locations where you will be working. If you have multiple study areas and species, identify species locations on a map. Formats such as PDF files, MS Excel, MS Word, and Word Perfect are acceptable. The attachment may not be larger than 10 MB. If you have a larger document and cannot reduce the size, please fax this document to the Permits Division at 301-427-2521.
 - 6) You may enter all the locations where you are requesting to work at one time, and then go back to enter the takes associated with those locations; or, you can enter a location and go straight to entering the takes for that location.

How to Edit or Delete a “currently defined” Location

- 1) **Edit/Delete Location**: From the “Project Locations and Take Information” main page, click on this button to edit location information you entered or to delete a location.
- 2) This will take you to the “Project Location Information” page. Here you can edit any information previously entered on this page. Select “save” to save your changes.
- 3) **Delete Location**: Clicking on this button will delete the location specified on the “Project Location Information” page. A pop up box will ask if you want to delete. Click “OK” to delete and “Cancel” to cancel the deletion.



Deleting a location will also delete all associated takes (if entered) with that location. You will get a warning message to confirm that you want to delete a location.

Take Information Pages

Overview

- **Edit/Add Take** : You may access this button from the “Project Locations and Take Information” main page or from the “Project Location Information” page. Click on this button to go to the “Take Information” page. You may also click on the “Next >” link from the “Project Location Information” page to get to the “Take Information” page.
- On this page you will enter the species to be taken, by age and sex class, the number of individuals, methods (e.g., capture, intrusive procedures), and sample dates (See *Entering Take Information* section below).

Note: All data fields in the take table require entries and the information must be specific to the location listed at the top of the page. If you have more than one location, each location will have a separate take table. **Save your data often so that information is not lost.**

- The “Take Information” page has three parts:
 - The top of the page identifies which location you are working on;
 - The middle has editing tools (buttons) that allow you to add, edit, delete, copy, and re-organize take records in the take table; and
 - The bottom has the take table.
- You will create a separate record row for each unique combination of species, production type (wild or captive), life stage, take action, capture method, and procedures.
- The take table is a very large landscape format. Depending on the size of your screen you may need to use the right and left scroll arrows to complete the table.

Take Table Editing Tools (Buttons)

Editing buttons above the take table appear in the following order:

- 1) **Add More Lines**: Clicking this button allows you to add more lines (rows) to the take table. You can only add more lines if at least one row contains data.
- 2) **Edit Selected Records**: Use this to “unlock” or “unfreeze” selected rows in the take table so that you can edit information you have previously entered and saved. You must first put a check in (click on) the “**Select**” box at the far left of each row you want to edit. Click on the **Save** button to save your edits.
- 3) **Delete Selected Records**: Clicking on this button allows you to delete selected take rows from this location. You must first put a check in (click on) the “**Select**” box at the far left of each row you want to delete. Click on the **Save** button to save your edits.
- 4) **Copy Selected Records**: This tool allows you to copy selected take records to the current location, another location within the same general area, or a location in a different general area. You must first put a check in (click on) the “**Select**” box at the far left of each row you want to copy.

Note: The “Copy Selected Records” function is useful if you are conducting the same activities on multiple species (e.g., enter all the procedure information for one species, copy that row, and then edit the record as needed).

- 5) Clicking on the **Copy Selected Records** button will open a new window. **You may choose to go to a new location (i.e., a separate take table) after you copy the records or stay at the location you are in by selecting those radio button options** in the “Copy Take Records” pop up window.
- a) **If you copy the takes within the current location**, you will make duplicate copies of the selected rows. The copied records will appear at the bottom of the take table. You must make some changes to the copied rows or you will receive a “duplicate records” error message.
 - b) **If you copy the takes to a new location (e.g., a state) within the same general area (e.g., Atlantic Ocean)**, the information you have entered will be saved, you will be taken to a new location information page, and all the take information from the previous location will already be entered. In order to distinguish the new location from other locations, you must make sure that at least one of the location descriptors is unique.
 - c) **If you copy the takes to a new location in a new general area** (e.g. Atlantic Ocean to Pacific Ocean), you will be taken to a blank location page. Once you enter the location information and click the **Edit/Add Take** button, you will go to the “Take Information” page and you will see all the takes you copied from the previous location.
 - d) **If you copy the takes to another location you have already created**, you will be taken to that location page and all the take information you copied from the previous location will already be entered. The records will appear at the bottom of the take table.
- 6) **Copy All Records**: This function allows you to copy all take records to the current location, a new location within the same area, a new location outside the area, or to another location you already created. See the information in the “Copy Selected Records” section above for more details about the options.
- Note:** You may choose to go to the new location after you copy the records or stay at the location you are in by selecting those radio button options in the “Copy Take Records” pop up window.
- 7) **Re-number lines**: Each line in the take table is numbered. If you delete one or more records, click this button to re-number the remaining lines consecutively. This tool also re-orders the rows alphabetically by species’ common name and population name.

- 8) **Edit Location**: Clicking on this will take you back to the “Location Information” screen for editing (effectively “unlocking” the location in the top portion of the page).
- 9) **Save**: This button saves all edited or updated take information. **Save often** in case of interruption or computer problems, and save before navigating to another page.
- 10) **Export to Excel**: This button allows you to export your take table to Microsoft Excel.

Entering Take Information

The take table represents **annual** takes for the duration of your project. The takes you enter *for this location* are displayed in a table in the lower part of the page. If you have not entered any take information, the table is blank (except for automatically entered begin and end dates). You must enter at least one row for every location. Enter the following information to add takes for each location in the application.

Note: The options that appear in the dropdown menus in the take table are based on the species group (e.g., marine mammals) you indicated in the PAG, the location that you have selected, and the individual species that you select. If you are having difficulties, please first check that the previous fields were entered correctly. See [Appendix VII](#) for a list of the options that appear in the take table drop down menus.

Columns in the take table appear in the following order:

- 1) **Select:** Leave this box blank unless you need to copy, move, or delete the line following the instructions above.
- 2) **Line:** Each line in the Take Information section is automatically numbered. If you make changes to the take table (e.g., delete a line), you may renumber the lines in consecutive and alphabetical order following the instructions above.
- 3) **Species:** Use the drop down list to select one species. Species are listed alphabetically by common name and/or category (e.g., whale, sperm). If the species you are looking for is not on the drop-down menu, double check your location (species are populated based on location). If you are still having problems, contact the Permits Division at 301-713-2289.

Note: For a complete list of species, click on the “Species Lists” link on the left side of the “Project Location” page (you will have to navigate back to the “Project Location” page).

- 4) **Listing Unit/Stock:** Depending on the species selected in the previous field, this field will display those listing units or stocks that are in the location in which you are working. Use the drop-down list to select a “Listing Unit/Stock.” Choose “Range-wide” if, for example, your location has multiple stocks of the same species and you cannot distinguish between them while in the field; or, for example, if you are importing specimens from locations worldwide. Do not select “Range-wide” for ESA-listed species whenever possible.
- 5) **Production/Origin:** Use the drop-down list to select a “Production/Origin.” Available categories include “wild” and “captive,” and for marine mammals, “rehabilitation facility.” If you will be entering take information for more than one type of Production/Origin, you will need to enter a separate row for each one.
- 6) **Life Stage:** Use the drop-down list to select the applicable life stage. You may enter take information for more than one life stage (e.g., adult versus juvenile) on separate rows or select a combination of life stages for one take category.
- 7) **Sex:** Use the drop-down list to select a sex. If your activity targets only one sex, indicate which. If it targets both and they can be targeted separately, enter separate rows for male and female; otherwise select “Male and Female.”
- 8) **Expected Take:** This represents the number of animals you expect to take or import, annually. Enter the number of animals you expect to capture, observe, etc. for the “Take Action” you select. For actions where a number is difficult to determine (e.g., abalone spawning, import/export of parts), contact the Permits Division at 301-713-2289.
- 9) **Indirect Mortality:** This column is inactive. You may enter indirect mortality numbers associated with all take actions by choosing “**Unintentional Mortality**” as a separate “Take Action” on a separate row in the take table.
- 10) **Takes Per Animal:** Indicate the number of times an individual will be subject to the take actions, etc., annually. See [Appendix VIII](#) for more guidance.
- 11) **Take Action:** Use the drop-down list to select the type of action. The “Take Action” is a generalized overview of how animals will be taken. Select only one action. If more than one action is proposed, you must enter the takes on separate rows.
- 12) **Observe/Collect Method:** Use the drop-down list to select the method of observation (e.g., survey, vessel) or capture (e.g., net). Select only one observe/collect method per row. If various methods will be used, you must provide take information in separate rows for each observe/capture method.

Note: You can use the **Copy Selected Records** button to duplicate takes within this location (see above for directions).

13) **Procedures:** This field is where you provide specific information on the research or enhancement activities that will be conducted. A separate pop-up window will appear with a species-specific list of activities. Hold down the Control key to select all activities to be performed concurrently. Choose “Other” if your proposed activity is not listed. In the “Details” box (see below), briefly describe what the “Other” means.

Note: The procedures list includes both intrusive activities such as “insert ingestible telemeter pill” and non-intrusive activities such as “observations, behavioral,” “photo-id,” and “acoustics, passive recording.”



Refer to [Appendix VII](#) for a complete listing of “Take Actions,” “Observe/Collect Methods” and “Procedures” by species groups.

14) **Run:** For fish species, use the drop-down menu list to select an appropriate run, as applicable. Otherwise, select N/A.

15) **Transport:** If you will be transporting live animals during your research or enhancement activities and chose “transport” as a “Procedure,” clicking on this button will allow you to enter information about the transport. Click on the this button to enter or edit the information.

In the “Transport Information” window, you have the option to select a transport location from information you previously entered. If you have not previously entered transport information or you need to enter a new transport record, click on the “click here” link to go to the “Transport Information” window. All of the fields on this page are required.

a) ***Mode(s) of transportation:** Describe the mode of transportation. Include a description of the vehicle or other platform used to transport animals.

b) ***The name of the transportation company, if applicable, and the qualifications of the common carrier to transport live animals:** If a contractor or other entity will do the transportation, enter information in the box. Otherwise, click on N/A.

c) ***Maximum length of time from capture to arrival at destination:** How long will the animal(s) be in transport?

d) ***Description of the container (e.g., cage, tank) used to hold the animal during transit:** Include the material of the container and its dimensions.

- e) ***Any special care procedures (e.g., moisture, medicines, aeration) to be administered during transport:** How will the animals be cared for during transport?
- f) ***A statement as to whether the animals will be accompanied by a veterinarian or some similarly qualified person:** If so, give the name, affiliation, contact information for each person.
- g) ***Destination:** Use the drop down list to select the species destination. If your destination is not on the list, click on the “New Facility” button to add it. If the animals will be taken to a laboratory, classroom, or aquarium, provide details of the location. If the animals will be released in another waterbody, provide details of the location.
- h) ***How will the animals be contained at the destination facility?:** Describe the containment system for the animals, quarantine procedures, and effluent treatment.
- i) ***The final disposition of the animals:** Describe, for example, whether the fish will be released, sacrificed, or deposited in a museum collection (e.g., “Retain alive for six months, then release”; “Sacrifice for tissue analysis.”).
- j) When you have completed all nine fields, click the **Save** button to save the information and go back to the “Transport Information” box. When you have entered all the transport information for your application, save and return to the “Take Information” page.
- 16) **Begin Date:** This field is populated with the “Begin Date” you entered on the “Project Information” page. The take table represents **annual takes** within the overall project duration. You may change the date to coincide with a specific project time shorter than the overall duration of the project. You cannot enter a date that is earlier than the “Begin Date” you entered on the “Project Information” page.
- 17) **End Date:** This field is populated with the “End Date” you entered on the “Project Information” page. The take table represents **annual takes** within the overall project duration. You may change the date to coincide with a specific project time shorter than the overall duration of the project. You cannot enter a date that is later than the “End Date” you entered on the “Project Information” page.
- 18) **Details:** You may enter up to 255 characters in this text box to provide details on each take table row. For example, if you chose “instrumentation, external” as a procedure, use this box to describe what type of instrument you will be deploying (e.g., satellite tags).

- 19) When finished entering and saving take information, either click on “Next >” to take you back to the location page for any final location editing or adding new location and take information; OR, go to the breadcrumbs on top of the page and click on “NEPA.”

National Environmental Policy Act (NEPA) Considerations Page

You are required to answer all five questions on this page. Please answer each question completely. **“Yes” or “no” are not sufficient answers** and your application will be considered incomplete. When you are finished, click the “Next >” link.

- 1) Will your activities involve equipment (e.g., scientific instruments) or techniques that are new or may be considered experimental or controversial? If yes, are they likely to be adopted by other researchers in the future?
- 2) Do your activities involve collecting, handling, or transporting potentially infectious agents or pathogens (e.g., biological specimens such as blood)? Do your activities involve using or transporting hazardous substances (e.g., toxic chemicals)? If yes, provide a description of protocols you will use to ensure humans are not infected or injured.
- 3) Do any of your activities occur in or near unique geographic areas such as state or National Marine Sanctuaries, Marine Protected Areas, Parks or Wilderness Areas, Wildlife Refuges, Wild and Scenic Rivers, designated Critical Habitat for endangered or threatened species, Essential Fish Habitat, etc.? If yes, would any aspect of your activities impact the physical environment, such as by direct alteration of substrate (e.g., by bottom trawling, net setting, anchoring vessels or buoys, erecting blinds or other structures, disrupting nesting bird habitat)?
- 4) Could your work affect sites listed in or eligible for listing in the National Register of Historic Places? Could your work cause loss or destruction of scientific, cultural, or historic resources (e.g., archeological resources)? If yes, list the sites and explain how they might be affected or why they would not be affected.
- 5) Could any of your activities, intentionally or not, involve the transport any materials, biological or otherwise, from one area to another (e.g., transporting animals or tissues, discharging ballast water, working in sensitive remote areas)? If yes, explain the types of activities. Describe all measures you would take to prevent the possible introduction or spread of non-indigenous or invasive species (including plants, animals, microbes, or other biological agents).

Project Contacts Page

On this page you will enter information about the people who will be responsible for overseeing the project and others who will be working under the permit. As the person entering the application, you will automatically be assigned the following roles:

Applicant/Permit Holder, Principal Investigator, and Primary Contact. See the directions below for how to change who is assigned to these roles.

The following table and [Appendix II](#) explain the differences between the personnel roles.

Note: The Applicant, Principal Investigator, and Primary Contact can be the same person.

	Able to make changes to application	Must be named in the permit application	CV, resume, or list of qualifications required	Receive automatic emails from APPS	Can request modifications and submit annual reports
Applicant/Holder	Yes	Yes	Yes	Yes	Yes
Responsible Party	Yes	Yes (only if Holder is an entity)	No (If they are participating in the research they should also be listed as a Co-investigator)	Yes	Yes
Principal Investigator	Yes	Yes	Yes	Yes	Yes
Primary Contact	Yes	Yes	No	Yes	Yes
Co-Investigator	No	Yes	Yes	No	No
Other personnel (e.g., Research Assistants)	No	No	No	No	No

To change the person assigned to the Applicant/Permit Holder, Principal Investigator, Responsible Party, and Primary Contact roles, click the **Change** button next to the name. This action will open the “Contact Search” window. To prevent duplicate entries, **you MUST ALWAYS search the database for the person before entering a new contact.**

Use the following steps to search:

- 1) Enter the person's **last name**.
- 2) Click **Search for Contact**.
- 3) If the person is listed in the search results, click the **Select** button to add them to your application.
- 4) If too many entries are returned, you may enter additional information about the person, and click **Search for Contact** again.
- 5) If the search did not find the person you want to add, click **Create New Contact**.
- 6) You will be prompted to enter the person's contact information. Enter all required information and save when you are finished.

Note: If you remove yourself as a contact you will no longer have access to the application.

A project must have a **Responsible Party** when the Applicant/Permit Holder is an organization, institution, or agency. The Responsible Party is an official who has the legal authority to bind the organization, institution, or agency and is ultimately responsible for all activities of any individual operating under the authority of the permit.

Note: The Responsible Party is most often used when there is a likelihood of staff changes. For example, permits cannot be transferred from one individual to another. If the Permit Holder changes, NMFS has to issue a new permit. However, the Responsible Party role can be transferred to another individual. Long-term research projects held by public agencies tend to encounter staff changes and in many cases, NMFS has assigned the Permit Holder role to the agency. It is up to the applicant to decide if this is appropriate for their project. To add a Responsible Party, follow the steps above.

In addition to the roles described above, you must add **Co-investigators** to the application if the Principal Investigator will not always be present during the permitted activities. Co-investigators are individuals who are qualified and authorized to conduct or directly supervise activities conducted under a permit issued for scientific research or enhancement purposes without the on-site supervision of the Principal Investigator.

Use the following steps to add a Co-investigator:

- 1) Click on the **Add Personnel** button.
- 2) The Contact Search box will open
- 3) Follow the instructions above for searching and adding a new contact.
- 4) Once you select a person, click on the **Save Personnel** button before adding another Co-investigator.
- 5) Repeat this process until you have added all Co-investigators.

Qualifications and Experience

You are required to submit information about the qualifications and experience of the Principal Investigator and all Co-investigators. This information can be in the form of a resume, CV, or simple summary. The documentation you submit must demonstrate the individual's qualifications to conduct the activities (e.g., blood sampling) proposed on the target species and include a list of relevant publications.

To attach documentation, such as a resume:

- 1) Click the **Add CV** button next to the person's name.
- 2) A pop-up window will appear that allows you to attach a file.

Note: If the person's CV is already in the APPS system, you will see a file name under "Selected File;" however, **we ask that you still attach your version** because it may be more recent than the one we have on file.

- 3) Click **Browse** and locate the file.
- 4) Click **Attach** and wait for the file to upload.
- 5) When finished, click the **Cancel** button to close the pop-up window.



Resumes and CVs are considered **part of an application's public record** and are available to reviewers and the public. Refer to the Additional Information at the end of this chapter. Please **do not** include personal information such as:

- Home address/phone number
- Date of birth
- Social security number
- Nationality
- Marital status
- Salary

As the Applicant, it is your responsibility to notify your Co-investigators that their names and resumes will be available to the public. When you submit your application, **all Co-investigators will receive an automatic email** saying that they have been named on your application.

You may also add personnel who perform other roles (Research Assistants, Veterinarians, Tissue Sample Disposition) to the application.

To add other personnel:

- 1) Click on the **Add Personnel** button.
- 2) The Contact Search box will open.
- 3) Follow the instructions above for searching and adding a new contact.
- 4) Once a person is added, APPS defaults their “role” to Co-investigator.
- 5) To change the role, click on “Co-Investigator.”
- 6) Another window will open with a list of roles. Choose the role you want.
- 7) Click Save.
- 8) Once the role has been assigned, click on the **Save Personnel** button before adding other personnel.

When you are finished, click the “Next >” link to go to the Submit Application page.

Submit Application Page

Before you can submit your application, you must authenticate your identity and certify that all information in the application is correct. After you click the

Click Here to Submit Application button, an authentication screen will appear.

Authentication and Certification

1) Print the following screen and have the Applicant/Permit Holder or Responsible Party sign and date the page (for personnel definitions refer to [Appendix II](#)). If the Principal Investigator (PI) differs from the Applicant/Permit Holder or Responsible Party then the PI must also sign and date the page. Signatures will remain on file in the Permits Division for five years or until you apply for a new permit, whichever comes first.

Authentication for MMPA/ESA Section 10 Permits - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address http://161.55.120.176/certify/identity_authentication.cfm?RecType=Project&RecordID=13293&ProjectID=13293

NOAA Fisheries
National Marine Fisheries Service

Authorizations and Permits for Protected Species (APPS)

WARNING!! TEST DATA ONLY!! (TestPermits)

Applicant: Kate Swails
File #: 13293
Title: TEST: Cert/auth

[Print] [Return to Application]

Authentication for MMPA/ESA Section 10 Permits

Before you can submit your application, you must authenticate your identity and certify that all information is correct. Please print out this page, sign it, and fax it to the appropriate number listed below to authenticate your identity. When receipt is confirmed, you will be able to submit your application and will be required to certify the accuracy of your application. Your signature will remain on file with the appropriate office for use for the next five years or until you apply for a new permit, whichever comes first.

WHO SHOULD SIGN?
This page should be signed by the **Applicant/Permit Holder** (the person, institution, or agency that is ultimately responsible for all activities of any individual who is operating under the authority of the permit). If the Applicant/Permit Holder is not a person (e.g., NMFS Science Center, University) the **Responsible Party** should sign. If the **Principal Investigator (PI)** is different than the Applicant/Holder, then that person should also sign. (For more information on the different types of permit roles, please see the Help Document.)

I hereby certify, under penalty of perjury, that the information in this electronic application is complete, true, and correct to the best of my knowledge and belief. It is my intent to submit the information for the purpose of obtaining a permit. Should a permit be issued, I will be responsible for the activities conducted under this permit.



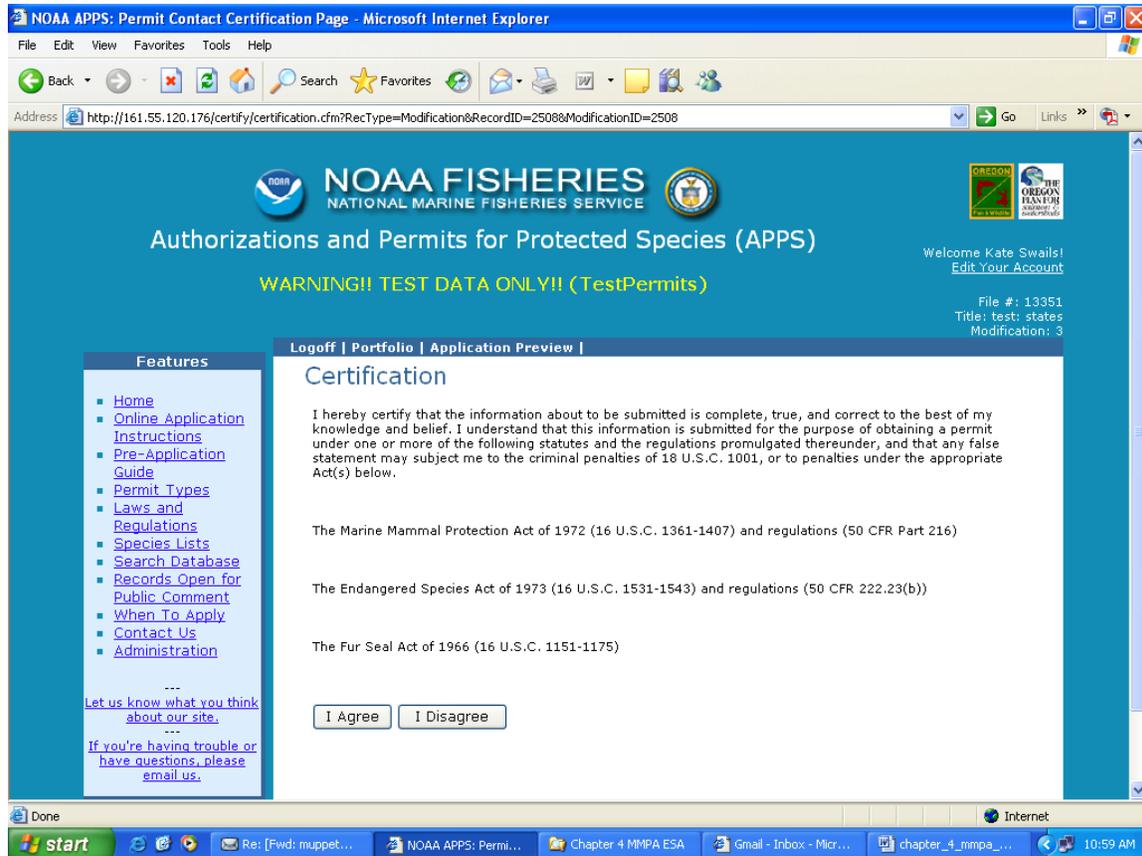
*To print on one page make sure your text size is set to “smaller.”
In Internet Explorer go to “View” then “Text Size” and choose
“smaller.”*

2) After you have signed and dated the page, please fax it to the Permits Division at 301-427-2521.

3) Once you have faxed your authentication page, save your application and log off APPS.

4) A permit analyst will email or call you to confirm receipt of the signature page within 1-2 business days.

5) After you are notified that your signature was received by the appropriate office, you may log into APPS and submit your application by clicking on the **Click Here to Submit Application** button. The following certification screen will appear:



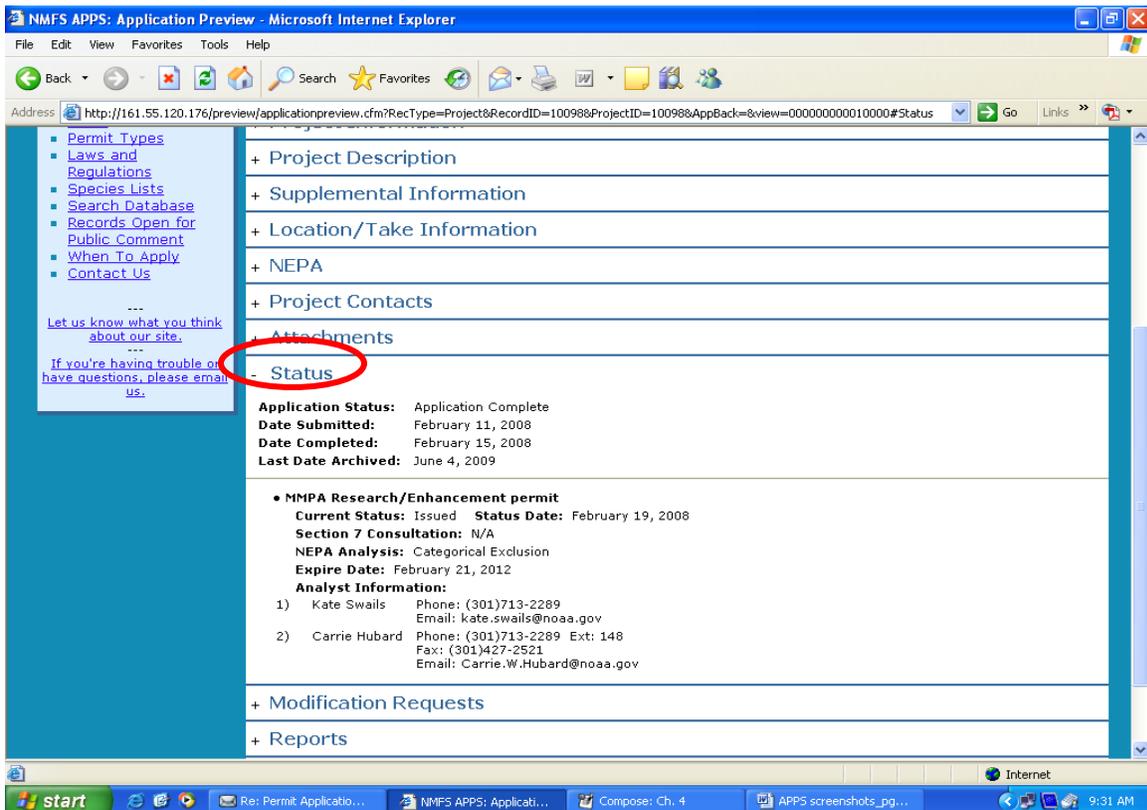
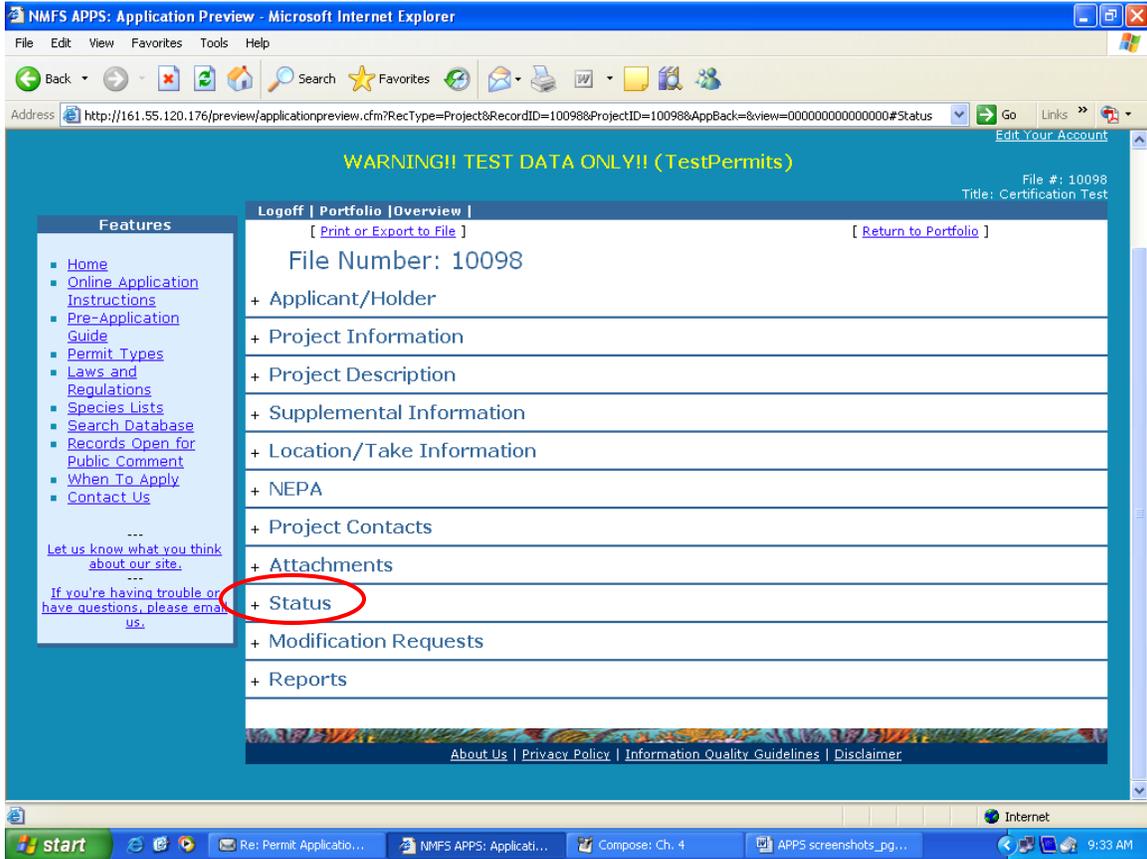
6) You must read and accept the certification statement before your application can be submitted. If you choose not to accept the statement, your application will not be submitted and your request cannot be processed.

7) Once submitted, you will receive an automatic email saying that you have successfully submitted your application.

Project Status

Once an application has been submitted, the “Project Status” page will track the progress of the application. This screen will display which analysts have been assigned your application and where your application is in the review process. From the “Project Overview” page, click on the “Application Preview” link. From this page you can access the “Status” page. Click on the “+” next to “Status” to open that page (see below).

Application Preview Screen



Requesting a Modification

This section of APPS allows the Applicant, Principal Investigator, and Primary Contact to request changes to the issued permit.

Note: The Director, Office of Protected Resources, may amend or modify scientific research and enhancement permits in response to or independent of a request from the Permit Holder. Amendments and modifications are subject to additional analyses under NEPA and the ESA.

Requests to modify the following permit specific conditions may require a new 30-day public review and comment period:

- changing the species to be taken or imported/exported;
- increasing the number of animals to be taken or imported/exported;
- changing or adding locations;
- changing methods; and
- extending the expiration date.

Other requests such as changing personnel or allowing a film crew to accompany the researchers may be authorized without public review.

To begin, log in to your portfolio and open the submitted or issued permit that you would like to modify by clicking on the “file number” link. At the top of the page, you will see a series of links including “Request a Modification.” Click on this link to open the “New Modification Request” page (see below).

New Modification Request Page

NOAA APPS: Permit/Authorization Modification Request - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Address http://161.55.120.176/modify/modification_request.cfm?ProjectID=10098

Authorizations and Permits for Protected Species (APPS)

Welcome Kate Swails!
[Edit Your Account](#)

File #: 10098
Title: Certification Test

Logoff | Portfolio | Save | Application Preview |

New Modification Request

[< Previous](#) | [Reset](#) | [Next >](#)

You must refer to the [Online Application Instructions](#) for specific information on how to complete each section.

* 1) What changes are you requesting (Select all that apply)?

- Edit/Add location
- Edit/Add Take Information
- Edit personnel
- Permit extension for a year or less
- Authorization to allow a film crew to accompany researchers
- Change study objectives/hypotheses
- Other

* 2) Provide a Title for your request:

* 3) Describe your request:

Features

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

Let us know what you think about our site.

If you're having trouble or have questions, please email us.

Done Internet

start Re: [Fwd: muppet... NOAA APPS: Permi... Chapter 4 MMPA ESA Gmail - Inbox - Micr... chapter_4_mimpa... 11:02 AM

Modification Request Questions

1) ***What changes are you requesting?*** (Select all that apply)

On the first page of the “New Modification Request” window, you must check the type(s) of modification(s) you are requesting. You have the following list of options:

- Edit/Add Location
- Edit/Add Take Information
- Edit Personnel
- Permit Extension for a year or less
- Authorization to allow a film crew to accompany researchers
- Change Study Objectives/Hypotheses
- Other

Your selections will dictate which fields are available for you to edit on the screens that follow. For example, if you select “Edit/Add Take Information” you will only be able to modify the take table. If you decide that you need to change other parts of the permit, you will have to return to this screen and check those options.

2) ***Provide a Title for your request*** (up to 255 characters)

Describe the modification as concisely and descriptively as possible. Be sure to enter a modification title before logging out of the system.

3) ***Describe your request*** (no text limit)

A request to modify an issued permit should address the pertinent sections of these instructions **relevant to the requested change**. Your request should include the following information, as applicable. See corresponding sections of application above for information required under each category below. Disregard those that do not apply to your modification request.

- Brief narrative summary
- Research timeframe and sampling season/project duration
- Literature review
- Purpose: hypothesis/objectives and justification (also include a report of takes used annually to date when requesting a take increase)
- Project description (include specifications for changes in methods or gear, such as tags)
- Status of the affected species (if requesting a change in species)
- Lethal take (intentional or unintentional)
- Anticipated effects on animals
- Measures to minimize negative effects
- Resources needed to accomplish objectives
- Captive information
- References

- For personnel changes, include qualifications/experience in each take activity
- For filming authorizations, include who (names and roles of crew), what, when, where, why, how, and products that will be developed.

Notes: If requesting a change in authorized take, please make sure to select “Edit/Add Take Information” and edit your take table within APPS. Do **not** provide a separate take table when attaching a file.

For changes in field equipment or study areas, we highly recommend that you attach figures, maps or illustrations drawn to scale.

4) *Attach a file (Optional):*

If you need to attach figures, maps, or other supporting documents please attach a file. To open the attachments window, click on the “Select File” button. Within the attachments window, you will click on the “Browse” button, and then navigate to the directory containing the file you wish to attach. After locating the file, click the “Attach” button. You can attach more than one document from this window. When you have finished attaching files, click the “Cancel” button to return to the modification request form. If you are making substantial or complex changes to your permit, your attachment should contain enough detail in order for reviewers to understand your request.

Click “Next >” to proceed.

Modification Types

Edit/Add Location

If you selected this option, you will see the “Modification Locations and Take Information” screen. Currently defined locations are displayed in the lower half of the screen. For instructions on adding locations and take information, see the “Project Locations and Take Information” section above. There is no limit to how many locations you can add.

To increase your action area by adding states to your action area, click on the “Change area or state” button.

To add a new location, click on the “Add new location” button.

To edit or delete an existing location, select the location and click on the “Edit/Delete location” button.

When you have completed changes to the location information, and if you have no other edits, you can submit your modification request. Click the “Next>” link at the top right

of the screen. You should now see the “Submit Modification Request” screen. You are encouraged to preview your modification before submitting.

Edit Take Information

This option allows applicants to request a modification to the take table. Some of the typical types of modification requests include the addition of new methods, an increase in the number of animals taken, and the addition of new species. You may edit any part of the take table. See the “Take Table” section above for instructions on required information in the table.

When requesting an increase in the number of animals to be taken, make sure that you request the total number of animals to be taken (i.e., the number of takes you are currently authorized plus your proposed increase). Please note that requests for increases in take of species/stocks currently authorized by the permit must demonstrate valid justification, including a **reporting of how many authorized takes you have used**. Requests that do not provide this information may be considered incomplete. Provide justification in the “Describe your request” text box or by attaching a supporting document.

To request to remove/delete existing take records, first check the “Select” box to the left of the record you wish to delete, then click the “Delete selected records” button near the top of the page. A pop-up notice box will appear that indicates that the record will still appear in the table but is marked for deletion.

To request to modify existing take records, first check the “Select” box to the left of the record you wish to modify, then click the “Edit selected records” button near the top of the page. The take table should refresh with an editable copy of the original record with the next consecutive version number. For example, if you selected line number 2 to edit, the copied record should be line number 2, version A. Then, make the changes you would like to the record.

When you have finished entering the edits, additions, and deletions you want to request, click the “Save” button and then the “Next>” link. You will be taken to the “Location” page where you can then proceed to another location for which modifications are needed or submit your application.

Edit Personnel

Refer to the “Project Contacts” section above for instructions on editing personnel information. The process for searching and adding contacts for modifications is the same. When using the search function, be sure to exhaust your search (i.e., start out with a generic search before getting too specific so that duplicate contacts are not created). To request removal of a contact, check the box labeled “remove” to the right of the contact’s role.

Note: To add personnel you must attach a CV or resume for each person.



Resumes and CVs are considered **part of an application's public record** and are available to reviewers and the public. Refer to the Additional Information at the end of this chapter. Please **do not** include personal information such as:

- Home address/phone number
- Date of birth
- Social security number
- Nationality
- Marital status
- Salary

As the Applicant, it is your responsibility to notify your Co-investigators that their names and resumes will be available to the public. When you submit your modification, **all Co-investigators will receive an automatic email** saying that they have been named on your application.

Permit Extension for a year or less

If you wish to apply for a permit extension, check this box and include your proposed extended expiration date and justification in the description of your request.

Authorization to allow a film crew to accompany researchers

If you wish to apply for an authorization to allow a film crew to accompany you during research, check this box and provide information on who will accompany you (i.e., production company, names and roles of the crew), where and when filming would occur, and the purpose of the filming (e.g., documentary on humpback whales).

Change Study Objectives/Hypotheses

If you wish to modify the study objectives/hypotheses, check this box and include the new objectives/hypotheses the description of your request.

Other

If you check this box, please explain the modification in the description of your request.

Submitting Your Modification Request

After moving through all of the applicable windows, you may submit your request using the “Next >” links or click the “Submit” link near the top of the page. A window should appear that suggests you review your request before submitting. **IMPORTANT:** You must click the [Click Here to Submit Modification](#) button on this page to submit your application. Once submitted, you will receive an automatic email saying that you have successfully submitted your application. A permit analyst will contact you regarding your submitted application.

Call the Permits Division at 310-713-2289 if you need assistance.

Additional Information

Under section 104(c) of the MMPA and section 10(a)(1)(A) of the ESA, persons may be authorized to take marine mammals and threatened and endangered species, respectively, for purposes of scientific research or enhancing the survival of the species. Interested persons are required to submit an application in accordance with the Acts and the implementing regulations at 50 CFR part 216, subpart D, and 50 CFR part 222. These instructions for applying for a research or enhancement permit are drawn from, but do not substitute for, ESA regulations and MMPA regulations. These regulations are available at the following web site: <http://www.gpo.gov/>. MMPA section 104 is available at: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>. ESA section 10(a)(1)(A) is available at: http://www.nmfs.noaa.gov/pr/pdfs/laws/esa_section10.pdf.

Paperwork Reduction Act Statement

The information requested in this application is required and is used to determine whether the activities described in the application are consistent with the purposes and policies of the Acts and their implementing regulations.

Public reporting burden for this collection of information is estimated to average 50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

All permit documentation, including the application, permit and amendments, reports, inventory information, and any other associated documents are considered public information and as such, are subject to the Freedom of Information Act.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

*OMB Control No. 0648-0084
Expiration Date: 09/30/2009*

Interim Photography Permit Application Requirements

Introduction

Under the Marine Mammal Protection Act (MMPA), a permit may be issued for photography of marine mammals in the wild for educational or commercial purposes where the photography activities will not exceed Level B harassment¹. This permit is designed to accommodate professional photographers and filmmakers who have discrete projects and time frames that will result in products such as documentary films or commercial photographs.

This permit is not available for photography directed toward or that may affect marine mammals listed as endangered or threatened under the Endangered Species Act (ESA). Please contact the National Marine Fisheries Service (NMFS), Permits, Conservation and Education Division at (301) 713-2289 for inquiries regarding photography of ESA-listed species.

Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed. Applicants are provided with the following interim guidance for photography permit applications. This guidance is similar to that required for the General Authorization (GA) because the level of harassment authorized under photography permits and the GA is the same.

Applicants (i.e., the Principal Investigator [PI] or Responsible Party) must submit a permit application to the Chief, Permits, Conservation and Education Division at the address provided below. The PI is the individual primarily responsible for the activities conducted under a photography permit. The PI must have qualifications, knowledge and experience relevant to the type of photographic activities proposed. The Responsible Party is an individual who has the legal authority to bind an organization and who is responsible for supervision of the PI.

Once the submitted application is determined complete, the application will be forwarded to the Marine Mammal Commission for review, and notice of receipt of the application will be published in the *Federal Register* for a 30-day public comment period. Processing of a photography permit may take up to six months.

Please contact the Permits, Conservation and Education Division at the number above if you have any questions regarding preparation of an application for a photography permit.

¹ **Harassment:** Under the 1994 Amendments to the MMPA, harassment is statutorily defined as, any act of pursuit, torment, or annoyance which—

(Level A harassment) has the potential to injure a marine mammal or marine mammal stock in the wild; or, **(Level B harassment)** has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Marine Mammal Photography Permit Application

The applicant must provide the following information:

1. The date of the application.
2. The name, address, telephone number, email address, duties, and qualifications of the applicant (i.e., Principal Investigator [PI] or Responsible Party), Co-investigators [CI]², and other personnel (e.g., boat handlers) to be conducting the proposed photography activities. Provide a curriculum vitae, resume, or summary of qualifications for each individual, which must include accomplishments and experience relevant to the proposed activities each person will be performing.
3. The species or stocks of marine mammals that may be photographed, and any other species that may be incidentally disturbed or harassed by the activities. The description must include the species name (common and scientific names), number of animals that may be photographed, and number of animals that may be indirectly affected during photographic activities. Also include the number of times the animals may be approached and photographed and incidentally harassed within a specified time period.
4. The geographic location(s) in which the photography is to be conducted. Locations should be identified as specifically as possible within a general area (e.g., specific islands, bays, and latitude/longitude, within a specified geographic region or state). Include a map of the area if available. Indicate whether the location you will be working in has been given any special status (e.g., National Marine Sanctuary, State Reserve, etc.).
5. The time periods over which the photography will be conducted, including start date, approximate dates and/or field seasons if appropriate, and the duration of the overall photography project.
6. The rationale and objectives for such activity and how the products will be made available to the public.
7. The type of photography or filming to be performed and methods to be used. This information includes, but is not limited to, the following: platforms to be used (e.g., small boat, helicopter), description of photographic equipment (e.g., digital camera with telephoto lens and size of lens), deployment techniques if applicable, and approach distances to animals, etc. Include a justification of how such activities will result in only taking by Level B harassment of marine mammals and will not disturb, harass, or harm ESA-listed species.

² **Co-investigator** means the on-site representative of a principal investigator. CI's are individuals who are qualified and authorized to conduct or directly supervise activities in the absence of the PI. CI's assume the role and responsibility of the PI in the PI's absence.

NOTE: NMFS may determine that certain activities, such as underwater photography or filming activities, may exceed Level B harassment. In these cases, the activities would not be authorized.

8. A description of the anticipated responses the subject marine mammals will have to the proposed photography and likely impacts on any other species that may be incidentally affected during the proposed activities.

9. The application must include the following certification statement, signed and dated by the applicant:

"I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations (50 CFR Part 216). I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties provided under the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

Please send an original signed photography permit application, one copy of the completed and signed application, and an electronic copy of the application to the following address:

Chief, Permits Conservation and Education Division
Office of Protected Resources, F/PR1
NOAA/National Marine Fisheries Service
1315 East-West Highway, Room 13705
Silver Spring, MD 20910
Phone: (301) 713-2289
Fax: (301) 427-2521

Additional Information:

Under Section 104(c)(6) the Marine Mammal Protection Act (MMPA), a permit may be issued for photography of marine mammals in the wild for educational or commercial purposes where the photography activities do not exceed Level B harassment. Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed. MMPA section 104 is available at the following web site: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>.

Paperwork Reduction Act Statement:

The information requested in this application is required and is used to determine whether the proposed activity is likely to exceed Level B harassment of a marine mammal in the wild, whether the photography methods are adequate to meet the project objectives, whether the applicants are qualified to carry out the proposed activities, and how the products of such activities will be made available to the public.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

The permit application and any associated documents, including any reports required under the permit, are considered public information and as such, are subject to the Freedom of Information Act.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Instructions for Submitting a “Letter of Intent” under the General Authorization for Scientific Research

Introduction

Under the Marine Mammal Protection Act (MMPA), the General Authorization (GA) applies to *bona fide* scientific research¹ studies on marine mammals for activities involving only Level B harassment². Research on marine mammals listed as endangered or threatened under the Endangered Species Act (ESA), including research that would qualify for the GA, requires an ESA/MMPA scientific research permit.

Researchers desiring to take marine mammals in the wild via Level B harassment for purposes of *bona fide* scientific research under the GA must submit a letter of intent to the Chief, Permits, Conservation and Education Division (see instructions below). The individual responsible for the overall research project (i.e., the Principal Investigator [PI] or Responsible Party) must submit the letter of intent at least 60 days before the intended research start date. The PI is the individual primarily responsible for the activities conducted under the GA and must have qualifications, knowledge and experience relevant to the type of research activities proposed. The Responsible Party is the individual who has the legal authority to bind an organization and who is responsible for supervision of the PI.

The following types of research activities conducted on non-ESA listed marine mammals will likely qualify for inclusion under the GA: photo-identification studies, behavioral observations and passive acoustic recordings, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft.).

Requirements for applying for a GA included in these instructions are pursuant to National Marine Fisheries Service (NMFS) regulations implementing the MMPA (50 CFR 216.45) and MMPA section 104(c)(3)(C). If you have any questions about applying for a GA, call the NMFS Permits, Conservation and Education Division at (301) 713-2289.

¹ ***Bona fide* scientific research:** Scientific research conducted by qualified personnel, the results of which—

- likely would be accepted for publication in a refereed scientific journal;
- are likely to contribute to the basic knowledge of marine mammal biology; or
- are likely to identify, evaluate, or resolve conservation problems.

² **Harassment:** Under the 1994 Amendments to the MMPA, harassment is statutorily defined as, any act of pursuit, torment, or annoyance which—

(Level A harassment) has the potential to injure a marine mammal or marine mammal stock in the wild; or,
(Level B harassment) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

General Authorization Letter of Intent

National Marine Fisheries Service (NMFS) regulations require that General Authorization “Letters of Intent” contain the following information:

1. The name, address, telephone number, qualifications and experience of the applicant (i.e., the Principal Investigator [PI]) and any Co-investigators [CI]³) to be conducting the proposed research, and curriculum vitae for each, including a list of publications by each investigator relevant to the objectives, methods, or other aspects of the proposed research.

NOTE: The qualifications and experience listed in each curriculum vitae must include accomplishments relevant to the proposed activities each person will be performing. Please include an e-mail address to facilitate processing of your application.

2. The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research.
3. The geographic location(s) in which the research is to be conducted.

NOTE: Identify locations as specifically as possible within a general area (e.g., specific islands, bays, latitude/longitude, etc., within a specified geographic region or state). Include a map if available. For aerial or vessel surveys, indicate the coordinates outlining the proposed survey area(s). Indicate whether the location you will be working in has been given any special status (e.g., National Marine Sanctuary, State Reserve, etc.).

4. The period(s) of time over which the research will be conducted (up to five years), including start date, approximate dates or field season(s), and end date.
5. The purpose of the research, including a description of how the proposed research qualifies as “*bona fide* scientific research.”

NOTE: This includes, but is not limited to, the following information: hypothesis and objectives; how the results of the research are likely to contribute to the basic knowledge of marine mammal biology or are likely to identify, evaluate, or resolve conservation problems; how the research relates to the current body of knowledge on the subject species or past NMFS permitted research conducted by the applicant (if applicable).

6. The methods to be used to conduct the research.

NOTE: This includes, but is not limited to, the following information: sample size, specific methods or protocols to meet objectives of research, approach distances and frequencies, number of crew during field research, etc. NMFS may determine that specific proposed activities (e.g., underwater photography and filming; aerial surveys

³ **Co-investigator (CI)** means the on-site representative of a PI. CI’s are individuals who are qualified and authorized to conduct or directly supervise activities in the absence of the PI. CI’s assume the role and responsibility of the PI in the PI’s absence.

over pinniped rookeries) may exceed Level B harassment. In these cases, the applicant will be notified that a scientific research permit is required.

7. The “Letter of Intent” must include the following certification statement, signed and dated by the applicant:

“In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and implementing regulations (50 CFR part 216) I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.”

Please send an original signed General Authorization “Letter of Intent” to the following address:

Chief, Permits Conservation and Education Division
Office of Protected Resources, F/PR1
NOAA/National Marine Fisheries Service
1315 East-West Highway, Room 13705
Silver Spring, MD 20910
Phone: (301) 713-2289
Fax: (301) 427-2521

After receipt of a letter of intent, NMFS will issue a letter to the applicant either:

- (1) Confirming that the GA applies to the proposed scientific research as described in the letter of intent;
- (2) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the GA, and that a scientific research permit is required to conduct all or part of the subject research; or
- (3) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not *bona fide* research as defined above.

Additional Information:

Under section 104(c)(3)(C) of the MMPA, as amended, persons may be authorized to take marine mammals in the wild by Level B harassment, as defined in 50 CFR 216.3, for purposes of *bona fide* scientific research. Interested persons are required to submit a letter of intent in accordance with the interim final rule published on October 3, 1994 and submit certain information outlined at 50 CFR 216.45(b) under the General Authorization and provided in these instructions. Regulations implementing the GA may be found at 50 CFR 216.45 [59 FR 50376, Oct. 3, 1994] and are available at the following web site: <http://www.gpo.gov/>. MMPA section 104 is available at the following web site: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>.

Paperwork Reduction Act Statement:

The information requested in this application is required and is used to determine whether the research described in the letter of intent is likely to exceed Level B harassment of a marine mammal in the wild, whether a scientific research permit is required to conduct all or part of the subject research, and whether the research as described in the letter of intent is *bona fide*.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

The letter of intent and any associated documents, including any reports required under the GA, are considered public information and as such, are subject to the Freedom of Information Act.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Title I—Conservation and Protection of Marine Mammals

Moratorium on taking and importing marine mammals and marine mammal products

16 U.S.C. 1371

Sec. 101.

(a) Imposition; exceptions

There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 1374 of this title, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 1374 (c)(5) of this title, may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 1374 (c)(5) of this title, which is consistent with the purposes and policies of section 1361 of this title. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title, or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary without regard to section 1373 of this title. Such authorizations may be granted under subchapter IV of this chapter with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that subchapter by the Secretary without regard to section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i)

(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under section 1385 (f) of this title; or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 1978 (a) of title 22 for as long as such ban is in effect; and

(F)

(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991. For purposes of subparagraph (F), the term “driftnet” has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term “driftnet” does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)

(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 1372, 1373, 1374, and 1381 of this title permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter: Provided, further, however, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this chapter. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)

(A) Except as provided in subparagraphs (B) and (C), the provisions of this chapter shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property, so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals

listed as endangered species or threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this chapter.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this chapter.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this chapter.

(5)

(A)

(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(I) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382 (c) of this title; and

(II) prescribes regulations setting forth—

(aa) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(bb) requirements pertaining to the monitoring and reporting of such taking.

(ii) For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), a determination of “least practicable adverse impact on such species or stock” under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii) Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if

the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)

(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)

(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title, and
(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment

through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

(vi) For a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note), a determination of “least practicable adverse impact on such species or stock” under clause (i)(I) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(vii) Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(E)

(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 1824 (b) of this title, while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 1387 of this title, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 1387 of this title, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 1387 of this title shall not be subject to the penalties of this chapter for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 1387 of this title.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an

impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 1387 of this title to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99-625; 100 Stat. 3500).

(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107-314; 16 U.S.C. 703 note) shall not be subject to the following requirements:

(i) In subparagraph (A), “within a specified geographical region” and “within that region of small numbers”.

(ii) In subparagraph (B), “within a specified geographical region” and “within one or more regions”.

(iii) In subparagraph (D), “within a specific geographic region”, “of small numbers”, and “within that region”. O4

(6)

(A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) “Native inhabitant of Russia, Canada, or Greenland” means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) “cultural exchange” means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Exemptions for Alaskan natives

Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this chapter. Such regulations shall be prescribed after notice and hearing required by section 1373 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386 (b)(2) of this title, or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) Taking in defense of self or others

It shall not be a violation of this chapter to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) Good Samaritan exemption

It shall not be a violation of this chapter to take a marine mammal if—

(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) Chapter not to apply to incidental takings by United States citizens employed on foreign vessels outside United States EEZ

The provisions of this chapter shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 1802 of this title) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

(f) Exemption of actions necessary for national defense

(1) The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of this chapter, if the Secretary determines that it is necessary for national defense.

(2) An exemption granted under this subsection—

(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and

(B) shall not be effective for more than 2 years.

(3)

(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after—

(i) conferring with the Secretary of Commerce, the Secretary of the Interior, or both as appropriate; and

(ii) making a new determination that the additional exemption is necessary for national defense.

(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.

(4) Not later than 30 days after issuing an exemption under paragraph (1) or an additional exemption under paragraph (3), the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate notice describing the exemption and the reasons therefor. The notice may be provided in classified form if the Secretary of Defense determines that use of the classified form is necessary for reasons of national security.

Prohibitions

16 U.S.C. 1372

Sec. 102. (a) [TAKING.] — Except as provided in sections 101, 103, 104, 109, 111, 113, 114, and 118 of this title and title IV, it is unlawful—

(1) for any person subject to the jurisdiction of the United States or any vessel or other conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas;

(2) except as expressly provided for by an international treaty, convention, or agreement to which the United States is a party and which was entered into before the effective date of this title or by any statute implementing any such treaty, convention, or agreement—

(A) for any person or vessel or other conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States; or

(B) for any person to use any port, harbor, or other place under the jurisdiction of the United States to take or import marine mammals or marine mammal products; and

(3) for any person, with respect to any marine mammal taken in violation of this title, to possess that mammal or any product from that mammal;

(4) for any person to transport, purchase, sell, export, or offer to purchase, sell, or export any marine mammal or marine mammal product—

(A) that is taken in violation of this Act; or

(B) for any purpose other than public display, scientific research, or enhancing the survival of a species or stock as provided for under subsection 104(c); and

(5) for any person to use, in a commercial fishery, any means or methods of fishing in contravention of any regulations or limitations, issued by the Secretary for that fishery to achieve the purposes of this Act.

(b) [IMPORTATION OF PREGNANT OR NURSING ANIMALS; DEPLETED SPECIES OR STOCK; INHUMANE TAKING.] — Except pursuant to a permit for scientific research, or for enhancing the survival or recovery of a species or stock, issued under section 104(c) of this title, it is unlawful to import into the United States any marine mammal if such mammal was—

(1) pregnant at the time of taking;

(2) nursing at the time of taking, or less than eight months old, whichever occurs later;

(3) taken from a species or population stock which the Secretary has, by regulation published in the Federal Register, designated as a depleted species or stock; or

(4) taken in a manner deemed inhumane by the Secretary.

Notwithstanding the provisions of paragraphs (1) and (2), the Secretary may issue a permit for the importation of a marine mammal, if the Secretary determines that such importation is necessary for the protection or welfare of the animal.

(c) [IMPORTATION OF ILLEGALLY TAKEN MAMMALS.] — It is unlawful to import into the United States any of the following:

(1) Any marine mammal which was—

(A) taken in violation of this title; or

(B) taken in another country in violation of the law of that country.

(2) Any marine mammal product if—

(A) the importation into the United States of the marine mammal from which such product is made is unlawful under paragraph (1) of this subsection; or

(B) the sale in commerce of such product in the country of origin of the product is illegal;

(3) Any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner which the Secretary has proscribed for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

(d) [NONAPPLICABILITY OF PROHIBITIONS.] — Subsections (b) and (c) of this section shall not apply—

(1) in the case of marine mammals or marine mammal products, as the case may be, to which subsection (b)(3) of this section applies, to such items imported into the United States before the date on which the Secretary publishes notice in the Federal Register of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted; or

(2) in the case of marine mammals or marine mammal products to which subsection (c)(1)(B) or (c)(2)(B) of this section applies, to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

(e) [RETROACTIVE EFFECT.] — This Act shall not apply with respect to any marine mammal taken before the effective date of this Act [December 21, 1972], or to any marine mammal product consisting of, or composed in whole or in part of, any marine mammal taken before such date.

(f) [COMMERCIAL TAKING OF WHALES.] — It is unlawful for any person or vessel or other conveyance to take any species of whale incident to commercial whaling in waters subject to the jurisdiction of the United States.

Regulations on Taking of Marine Mammals

16 U.S.C. 1373

Sec. 103. (a) [NECESSITY AND APPROPRIATENESS.] — The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 2 of this Act.

(b) [FACTORS CONSIDERED IN PRESCRIBING REGULATIONS.] — In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on—

- (1) existing and future levels of marine mammal species and population stocks;
- (2) existing international treaty and agreement obligations of the United States;
- (3) the marine ecosystem and related environmental considerations;
- (4) the conservation, development, and utilization of fishery resources; and
- (5) the economic and technological feasibility of implementation.

(c) [ALLOWABLE RESTRICTIONS.] — The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

(1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 104 of this title;

(2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;

Permits

16 U.S.C. 1374

Sec. 104. (a) [ISSUANCE.] — The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 101(a)(5) or 306, or subsection (h) of this section.

(b) [REQUISITE PROVISIONS.] — Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) [IMPORTATION FOR DISPLAY OR RESEARCH.] —

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [August 28, 1994], the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

- (i) The species or stocks of marine mammals which may be harassed.
- (ii) The geographic location of the research.
- (iii) The period of time over which the research will be conducted.
- (iv) The purpose of the research, including a description of how the definition of bona fide research as established under this Act would apply.
- (v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of actions required to enhance the survival or recovery of the species or stock in light to the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d).

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after the date of enactment of this paragraph [April 30, 1996]. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2), issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994], to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 101 and 102. This subparagraph shall not apply to polar bear parts that were imported before the effective date of this subparagraph [June 12, 1997].

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before the date of the enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994] and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) [APPLICATION PROCEDURES; NOTICE; HEARING; REVIEW.] —

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) [MODIFICATION, SUSPENSION, AND REVOCATION.] —

(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) [POSSESSION OF PERMIT BY ISSUUE OR HIS AGENT.] — Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;⁵

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) [FEES.] — The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) [GENERAL PERMITS.] — (1) Consistent with the regulations prescribed pursuant to section 103 of this title and to the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 103(f) a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed \$4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.

TITLE IV—Marine Mammal Health and Stranding Response

Establishment of Program

16 U.S.C. 1421

Sec. 401. (a) ESTABLISHMENT. — The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, establish a program to be known as the "Marine Mammal Health and Stranding Response Program".

(b) PURPOSES. — The purposes of the Program shall be to—

(1) facilitate the collection and dissemination of reference data on the health of marine mammals and health trends of marine mammal populations in the wild;

(2) correlate the health of marine mammals and marine mammal populations, in the wild, with available data on physical, chemical, and biological environmental parameters; and

(3) coordinate effective responses to unusual mortality events by establishing a process in the Department of Commerce in accordance with section 404.

Determination; Data Collection and Dissemination

16 U.S.C. 1421a

Sec. 402. (a) DETERMINATION FOR RELEASE. — The Secretary shall, in consultation with the Secretary of the Interior, the Marine Mammal Commission, and individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, and marine conservation, including stranding network participants, develop objective criteria, after an opportunity for public review and comment, to provide guidance for determining at what point a rehabilitated marine mammal is releasable to the wild.

(b) COLLECTION. — The Secretary shall, in consultation with the Secretary of the Interior, collect and update, periodically, existing information on—

(1) procedures and practices for—

(A) rescuing and rehabilitating stranded marine mammals, including criteria used by stranding network participants, on a species-by-species basis, for determining at what point a marine mammal undergoing rescue and rehabilitation is returnable to the wild; and

(B) collecting, preserving, labeling, and transporting marine mammal tissues for physical, chemical, and biological analyses;

(2) appropriate scientific literature on marine mammal health, disease, and rehabilitation;

(3) strandings, which the Secretary shall compile and analyze, by region, to monitor species, numbers, conditions, and causes of illnesses and deaths of stranded marine mammals; and

(4) other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters.

(c) AVAILABILITY. — The Secretary shall make information collected under this section available to stranding network participants and other qualified scientists.

Stranding Response Agreements

16 U.S.C. 1421b

Sec. 403. (a) IN GENERAL. — The Secretary may enter into an agreement under section 112(c) with any person to take marine mammals under section 109(h)(1) in response to a stranding.

(b) REQUIRED PROVISION. — An agreement authorized by subsection (a) shall—

(1) specify each person who is authorized to perform activities under the agreement; and

(2) specify any terms and conditions under which a person so specified may delegate that authority to another person.

(c) REVIEW. — The Secretary shall periodically review agreements under section 112(c) that are entered into pursuant to this title, for performance adequacy and effectiveness.

Unusual Mortality Event Response

16 U.S.C. 1421c

Sec. 404. (a) RESPONSE. —

(1) WORKING GROUP. — (A) The Secretary, acting through the Office, shall establish, in consultation with the Secretary of the Interior, a marine mammal unusual mortality event working group, consisting of individuals with knowledge and experience in marine science, marine mammal science, marine mammal veterinary and husbandry practices, marine conservation, and medical science, to provide guidance to the Secretary and the Secretary of the Interior for—

(i) determining whether an unusual mortality event is occurring;

(ii) determining, after an unusual mortality event has begun, if response actions with respect to that event are no longer necessary; and

(iii) developing the contingency plan in accordance with subsection (b), to assist the Secretary in responding to unusual mortality events.

(B) The Federal Advisory Committee Act (5 App. U.S.C.) shall not apply to the marine mammal unusual mortality event working group established under this paragraph.

(2) RESPONSE TIMING. — The Secretary, in consultation with the Secretary of the Interior, shall to the extent necessary and practicable—

Title 50: Wildlife and Fisheries

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart A—Introduction

§ 216.3 Definitions.

In addition to definitions contained in the MMPA, and unless the context otherwise requires, in this part 216:

Acts means, collectively, the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Active sportfishing means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

Alaskan Native means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

Albacore tuna means the species *Thunnus alalunga*.

Article of handicraft means items made by an Indian, Aleut or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

- (1) Were commonly produced by Alaskan Natives on or before October 14, 1983;
- (2) Are composed wholly or in some significant respect of natural materials, and;
- (3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Assistant Administrator means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, or his/her designee.

Authentic native articles of handicrafts and clothing means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Bigeye tuna means the species *Thunnus obesus*.

Bluefin tuna means the species *Thunnus thynnus* or *Thunnus orientalis*.

Bona fide scientific research: (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

- (i) Likely would be accepted for publication in a refereed scientific journal;
- (ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or
- (iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

Carrying capacity means the Regional Director's determination of the maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the builder of the vessel, a marine surveyor's report, or the highest amount reported landed from any one trip.

Certified charter vessel means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

Co-investigator means the on-site representative of a principal investigator.

Commercial fishing operation means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sportfishing activities, whether or not the fish so caught are subsequently sold.

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

Custody means holding a live marine mammal pursuant to the conditional authority granted under the MMPA, and the responsibility therein for captive maintenance of the marine mammal.

Declaration of Panama means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

Director, Office of Protected Resources means Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Dolphin Mortality Limit (DML) means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.

Endangered Species means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see part 17 of this title).

ESA means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

ETP means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

Facility means, in the context specific to captive marine mammals: (1) One or more permanent primary enclosures used to hold marine mammals captive (i.e., pools, lagoons) and associated infrastructure (i.e., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or

(2) A traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Feeding is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is otherwise legal and is incidental to operation of the activity.

First exporter means the person or company that first exports the fish or fish product, or, in the case of shipments that are subject to the labeling requirements of 50 CFR part 247 and that only contain fish harvested by vessels of the United States, the first seller of the fish or fish product.

Fisheries Certificate of Origin, or *FCO*, means NOAA Form 370, as described in §216.24(f)(4).

Force majeure means forces outside the vessel operator's or vessel owner's control that could not be avoided by the exercise of due care.

FSA means the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Fur seal means North Pacific fur seal, scientifically known as *Callorhinus ursinus*.

Hard part means any bone, tooth, baleen, treated pelt, or other part of a marine mammal that is relatively solid or durable.

Harvesting nation means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

Humane means the method of taking, import, export, or other activity which involves the least possible degree of pain and suffering practicable to the animal involved.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of "import" in §216.24(f)(1)(ii) shall apply.

Incidental catch means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

Intentional purse seine set means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

International Dolphin Conservation Program (IDCP) means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.

International Dolphin Conservation Program Act (IDCPA) means Public Law 105-42, enacted into law on August 15, 1997.

International Review Panel (IRP) means the International Review Panel established by the Agreement on the IDCP.

Intrusive research means a procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). For captive animals, this definition does not include:

(1) A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or

(2) A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

Label means a display of written, printed, or graphic matter on or affixed to the immediate container of any article.

Land or landing means to begin offloading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

Large-scale driftnet means a gillnet that is composed of a panel or panels of webbing, or a series of such gillnets, with a total length of 2.5 kilometers or more that is used on the high seas and allowed to drift with the currents and winds for the purpose of harvesting fish by entangling the fish in the webbing of the net.

Level A Harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

Level B Harassment means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Longtail tuna means the species *Thunnus tonggol*.

Marine environment means the oceans and the seas, including estuarine and brackish waters.

Marine mammal means those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales, dolphins, and porpoises) and Pinnipedia, other than walrus (seals and sea lions).

MMPA means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

Native village or town means any community, association, tribe, band, clan or group.

Optimum sustainable population is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

Per-stock per-year dolphin mortality limit means the maximum allowable number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

Pregnant means pregnant near term.

Pribilovians means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

Principal investigator means the individual primarily responsible for the taking, importation, export, and any related activities conducted under a permit issued for scientific research or enhancement purposes.

Public display means an activity that provides opportunities for the public to view living marine mammals at a facility holding marine mammals captive.

Regional Director means the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930; or Regional Administrator, Northwest Regional Office, NMFS, 7600 Sandpoint Way, N.E., Building 1, Seattle, WA 98115; or Regional Administrator, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; or Regional Administrator, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802; or Regional Administrator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814; or Regional Administrator, Alaska Regional Office, NMFS, PO Box 21668, Juneau, AK 99802.

Rehabilitation means treatment of beached and stranded marine mammals taken under section 109(h)(1) of the MMPA or imported under section 109(h)(2) of the MMPA, with the intent of restoring the marine mammal's health and, if necessary, behavioral patterns.

Secretary shall mean the Secretary of Commerce or his authorized representative.

Serious injury means any injury that will likely result in mortality.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Skipjack tuna means the species *Euthynnus (Katsuwonus) pelamis*.

Soft part means any marine mammal part that is not a hard part. Soft parts do not include urine or fecal material.

South Pacific Ocean means any waters of the Pacific Ocean that lie south of the equator.

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

Southern bluefin tuna means the species *Thunnus maccoyii*.

Stranded or stranded marine mammal means a marine mammal specimen under the jurisdiction of the Secretary:

- (1) If the specimen is dead, and is on a beach or shore, or is in the water within the Exclusive Economic Zone of the United States; or
- (2) If the specimen is alive, and is on a beach or shore and is unable to return to the water, or is in the water within the Exclusive Economic Zone of the United States where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

Subsistence means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

Subsistence uses means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this definition—

- (1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.
- (2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—
 - (i) For other wildlife or fish or their parts, or
 - (ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

Threatened species means a species of marine mammal listed as “threatened” pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93–205.

Trip means a voyage starting when a vessel leaves port with all fish wells empty of fish and ending when a vessel unloads all of its fish.

Tuna means any fish of the genus *Thunnus* and the species *Euthynnus (Katsuwonus) pelamis*.

Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item listed in §216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately followed by a reasonable effort to retrieve the marine mammal.

Yellowfin tuna means the species *Thunnus albacares* (synonymy: *Neothunnus macropterus*).

[39 FR 1852, Jan. 15, 1974]

Editorial Note: For Federal Register citations affecting §216.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

Title 50: Wildlife and Fisheries
PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS
Subpart C—General Exceptions

§ 216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

(a) *Release requirements.* (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:

- (i) The marine mammal might adversely affect marine mammals in the wild;
- (ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or
- (iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.

(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.

(i) Notification shall be provided to:

(A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or

(B) The Office Director at least 30 days in advance of releasing any imported marine mammal.

(ii) Notification shall include the following:

(A) A description of the marine mammal, including its physical condition and estimated age;

(B) The date and location of release; and

(C) The method and duration of transport prior to release.

(3) The Regional Director, or the Office Director as appropriate, may:

(i) Require additional information prior to any release;

(ii) Change the date or location of release, or the method or duration of transport prior to release;

(iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or

(iv) Require other disposition of the marine mammal.

(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.

(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.

(b) *Non-releasability and postponed determinations.* (1) The attending veterinarian shall provide the Regional Director or Office Director with a written report setting forth the basis of any determination under paragraphs (a)(1)(i) through (iii) of this section.

(2) Upon receipt of a report under paragraph (b)(1) of this section, the Regional Director or Office Director, in their sole discretion, may:

(i) Order the release of the marine mammal;

(ii) Order continued rehabilitation for an additional 6 months; or

(iii) Order other disposition as authorized.

(3) No later than 30 days after a marine mammal is determined unreleasable in accordance with paragraphs (a)(1)(i) through (iii) of this section, the person with authorized custody must:

(i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;

(ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated marine mammal for any activity authorized under subpart D in lieu of animals taken from the wild.

(5) Any rehabilitated beached or stranded marine mammal placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, or any marine mammal imported for medical treatment otherwise unavailable and placed on public display pending disposition after such medical treatment is concluded, must be held in captive maintenance consistent with all requirements for public display.

(c) *Disposition for a special exception purpose.* (1) Upon receipt of an authorization request made under paragraph (b)(3)(i) of this section, or release notification under (a)(2), the Office Director may authorize the retention or transfer of custody of the marine mammal for a special exception purpose authorized under subpart D.

(2) The Office Director will first consider requests from a person authorized to hold the marine mammal for rehabilitation. The Office Director may authorize such person to retain or transfer custody of the marine mammal for scientific research, enhancement, or public display purposes.

(3) The Office Director may authorize retention or transfer of custody of the marine mammal only if:

- (i) Documentation has been submitted to the Office Director that the person retaining the subject animal or the person receiving custody of the subject animal by transfer, hereinafter referred to as the recipient, complies with public display requirements of 16 U.S.C. 1374(c)(2)(A) or, for purposes of scientific research and enhancement, holds an applicable permit, or an application for such a special exception permit under §216.33 or a request for a major amendment under §216.39 has been submitted to the Office Director and has been found complete;
- (ii) The recipient agrees to hold the marine mammal in conformance with all applicable requirements and standards; and
- (iii) The recipient acknowledges that the marine mammal is subject to seizure by the Office Director:
- (A) If, at any time pending issuance of the major amendment or permit, the Office Director determines that seizure is necessary in the interest of the health or welfare of the marine mammal;
- (B) If the major amendment or permit is denied; or
- (C) If the recipient is issued a notice of violation and assessment, or is subject to permit sanctions, in accordance with 15 CFR part 904.
- (4) There shall be no remuneration associated with any transfer, provided that, the transferee may reimburse the transferor for any and all costs associated with the rehabilitation and transport of the marine mammal.
- (5) Marine mammals undergoing rehabilitation or pending disposition under this section shall not be subject to public display, unless such activities are specifically authorized by the Regional Director or the Office Director, and conducted consistent with the requirements applicable to public display. Such marine mammals shall not be trained for performance or be included in any aspect of a program involving interaction with the public; and
- (6) Marine mammals undergoing rehabilitation shall not be subject to intrusive research, unless such activities are specifically authorized by the Office Director in consultation with the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals, and are conducted pursuant to a scientific research permit.
- (d) Reporting. In addition to the report required under §216.22(b), the person authorized to hold marine mammals for rehabilitation must submit reports to the Regional Director or Office Director regarding release or other disposition. These reports must be provided in the form and frequency specified by the Regional Director or Office Director.

[61 FR 21933, May 10, 1996]

Title 50: Wildlife and Fisheries

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart D—Special Exceptions

§ 216.30 [Reserved]

§ 216.31 Definitions.

For the purpose of this subpart, the definitions set forth in 50 CFR part 217 shall apply to all threatened and endangered marine mammals, unless a more restrictive definition exists under the MMPA or part 216.

[61 FR 21935, May 10, 1996]

§ 216.32 Scope.

The regulations of this subpart apply to:

- (a) All marine mammals and marine mammal parts taken or born in captivity after December 20, 1972; and
- (b) All marine mammals and marine mammal parts that are listed as threatened or endangered under the ESA.

[61 FR 21935, May 10, 1996]

§ 216.33 Permit application submission, review, and decision procedures.

(a) *Application submission.* Persons seeking a special exemption permit under this subpart must submit an application to the Office Director. The application must be signed by the applicant, and provide in a properly formatted manner all information necessary to process the application. Written instructions addressing information requirements and formatting may be obtained from the Office Director upon request.

(b) *Applications to export living marine mammals.* For applicants seeking a special exception permit to export living marine mammals, the application must:

(1) Be submitted through the Convention on International Trade in Endangered Fauna and Flora management authority of the foreign government or, if different, the appropriate agency or agencies of the foreign government that exercises oversight over marine mammals.

(2) Include a certification from the foreign government that:

- (i) The information set forth in the application is accurate;
- (ii) The laws and regulations of the foreign government involved allow enforcement of the terms and conditions of the permit, and that the foreign government will enforce all terms and conditions; and
- (iii) The foreign government involved will afford comity to any permit amendment, modification, suspension or revocation decision.

(c) *Initial review.* (1) NMFS will notify the applicant of receipt of the application.

(2) During the initial review, the Office Director will determine:

- (i) Whether the application is complete.
- (ii) Whether the proposed activity is for purposes authorized under this subpart.
- (iii) If the proposed activity is for enhancement purposes, whether the species or stock identified in the application is in need of enhancement for its survival or recovery and whether the proposed activity will likely succeed in its objectives.
- (iv) Whether the activities proposed are to be conducted consistent with the permit restrictions and permit specific conditions as described in §216.35 and §216.36(a).

(v) Whether sufficient information is included regarding the environmental impact of the proposed activity to enable the Office Director:

(A) To make an initial determination under the National Environmental Policy Act (NEPA) as to whether the proposed activity is categorically excluded from preparation of further environmental documentation, or whether the preparation of an environmental assessment (EA) or environmental impact statement (EIS) is appropriate or necessary; and

(B) To prepare an EA or EIS if an initial determination is made by the Office Director that the activity proposed is not categorically excluded from such requirements.

(3) The Office Director may consult with the Marine Mammal Commission (Commission) and its Committee of Scientific Advisors on Marine Mammals (Committee) in making these initial, and any subsequent, determinations.

(4) Incomplete applications will be returned with explanation. If the applicant fails to resubmit a complete application or correct the identified deficiencies within 60 days, the application will be deemed withdrawn. Applications that propose activities inconsistent with this subpart will be returned with explanation, and will not be considered further.

(d) *Notice of receipt and application review.* (1) Upon receipt of a valid, complete application, and the preparation of any NEPA documentation that has been determined initially to be required, the Office Director will publish a notice of receipt in the Federal Register. The notice will:

(i) Summarize the application, including:

(A) The purpose of the request;

- (B) The species and number of marine mammals;
 - (C) The type and manner of special exception activity proposed;
 - (D) The location(s) in which the marine mammals will be taken, from which they will be imported, or to which they will be exported; and
 - (E) The requested period of the permit.
- (ii) List where the application is available for review.
 - (iii) Invite interested parties to submit written comments concerning the application within 30 days of the date of the notice.
 - (iv) Include a NEPA statement that an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an EA or EIS, that an EA was prepared resulting in a finding of no significant impact, or that a final EIS has been prepared and is available for review.
- (2) The Office Director will forward a copy of the complete application to the Commission for comment. If no comments are received within 45 days (or such longer time as the Office Director may establish) the Office Director will consider the Commission to have no objection to issuing a permit.
 - (3) The Office Director may consult with any other person, institution, or agency concerning the application.
 - (4) Within 30 days of publication of the notice of receipt in the Federal Register, any interested party may submit written comments or may request a public hearing on the application.
 - (5) If the Office Director deems it advisable, the Office Director may hold a public hearing within 60 days of publication of the notice of receipt in the Federal Register. Notice of the date, time, and place of the public hearing will be published in the Federal Register not less than 15 days in advance of the public hearing. Any interested person may appear in person or through representatives and may submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.
 - (6) The Office Director may extend the period during which any interested party may submit written comments. Notice of the extension must be published in the Federal Register within 60 days of publication of the notice of receipt in the Federal Register.
 - (7) If, after publishing a notice of receipt, the Office Director determines on the basis of new information that an EA or EIS must be prepared, the Office Director must deny the permit unless an EA is prepared with a finding of no significant impact. If a permit is denied under these circumstances the application may be resubmitted with information sufficient to prepare an EA or EIS, and will be processed as a new application.
- (e) *Issuance or denial procedures.* (1) Within 30 days of the close of the public hearing or, if no public hearing is held, within 30 days of the close of the public comment period, the Office Director will issue or deny a special exception permit.
 - (2) The decision to issue or deny a permit will be based upon:
 - (i) All relevant issuance criteria set forth at §216.34;
 - (ii) All purpose-specific issuance criteria as appropriate set forth at §216.41, §216.42, and §216.43;
 - (iii) All comments received or views solicited on the permit application; and
 - (iv) Any other information or data that the Office Director deems relevant.
 - (3) If the permit is issued, upon receipt, the holder must date and sign the permit, and return a copy of the original to the Office Director. The permit shall be effective upon the permit holder's signing of the permit. In signing the permit, the holder:
 - (i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and
 - (ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director.
 - (4) Notice of the decision of the Office Director shall be published in the Federal Register within 10 days after the date of permit issuance or denial and shall indicate where copies of the permit, if issued, may be reviewed or obtained. If the permit issued involves marine mammals listed as endangered or threatened under the ESA, the notice shall include a finding by the Office Director that the permit:
 - (i) Was applied for in good faith;
 - (ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and
 - (iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.
 - (5) If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial.
 - (6) Under the MMPA, the Office Director may issue a permit for scientific research before the end of the public comment period if delaying issuance could result in injury to a species, stock, or individual, or in loss of unique research opportunities. The Office Director also may waive the 30-day comment period required under the ESA in an emergency situation where the health or life of an endangered or threatened marine mammal is threatened and no reasonable alternative is available. If a permit is issued under these circumstances, notice of such issuance before the end of the comment period shall be published in the Federal Register within 10 days of issuance.
 - (7) The applicant or any party opposed to a permit may seek judicial review of the terms and conditions of such permit or of a decision to deny such permit. Review may be obtained by filing a petition for review with the appropriate U.S. District Court as provided for by law.

[61 FR 21935, May 10, 1996]

§ 216.34 Issuance criteria.

- (a) For the Office Director to issue any permit under this subpart, the applicant must demonstrate that:

- (1) The proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals;
 - (2) The proposed activity is consistent with all restrictions set forth at §216.35 and any purpose-specific restrictions as appropriate set forth at §216.41, §216.42, and §216.43;
 - (3) The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;
 - (4) The proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock;
 - (5) Whether the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application;
 - (6) If a live animal will be held captive or transported, the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal; and
 - (7) Any requested import or export will not likely result in the taking of marine mammals or marine mammal parts beyond those authorized by the permit.
- (b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

[61 FR 21936, May 10, 1996]

§ 216.35 Permit restrictions.

The following restrictions shall apply to all permits issued under this subpart:

- (a) The taking, importation, export, or other permitted activity involving marine mammals and marine mammal parts shall comply with the regulations of this subpart.
- (b) The maximum period of any special exception permit issued, or any major amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of §216.39, the period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit.
- (c) Except as provided for in §216.41(c)(1)(v), marine mammals or marine mammal parts imported under the authority of a permit must be taken or imported in a humane manner, and in compliance with the Acts and any applicable foreign law. Importation of marine mammals and marine mammal parts is subject to the provisions of 50 CFR part 14.
- (d) The permit holder shall not take from the wild any marine mammal which at the time of taking is either unweaned or less than eight months old, or is a part of a mother-calf/pup pair, unless such take is specifically authorized in the conditions of the special exception permit. Additionally, the permit holder shall not import any marine mammal that is pregnant or lactating at the time of taking or import, or is unweaned or less than eight months old unless such import is specifically authorized in the conditions of the special exception permit.
- (e) Captive marine mammals shall not be released into the wild unless specifically authorized by the Office Director under a scientific research or enhancement permit.
- (f) The permit holder is responsible for all activities of any individual who is operating under the authority of the permit;
- (g) Individuals conducting activities authorized under the permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications;
- (h) Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed when undertaking such activities;
- (i) Special exception permits are not transferable or assignable to any other person, and a permit holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized under the subject permit;
- (j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are placed for purposes of transit, supervision, or care. For marine mammals held captive and marine mammal parts in storage, a copy of the permit shall be kept on file in the holding or storage facility.

[61 FR 21936, May 10, 1996]

§ 216.36 Permit conditions.

- (a) *Specific conditions.* (1) Permits issued under this subpart shall contain specific terms and conditions deemed appropriate by the Office Director, including, but not limited to:
- (i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;
 - (ii) The manner in which marine mammals may be taken according to type of take;
 - (iii) The location(s) in which the marine mammals may be taken, from which they may be imported, or to which they may be exported, as applicable, and, for endangered or threatened marine mammal species to be imported or exported, the port of entry or export;
 - (iv) The period during which the permit is valid.
- (2) [Reserved]
- (b) *Other conditions.* In addition to the specific conditions imposed pursuant to paragraph (a) of this section, the Office Director shall specify any other permit conditions deemed appropriate.

§ 216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart:

(a) Marine mammal parts are transferrable if:

(1) The person transferring the part receives no remuneration of any kind for the marine mammal part;

(2) The person receiving the marine mammal part is:

(i) An employee of NMFS, the U.S. Fish and Wildlife Service, or any other governmental agency with conservation and management responsibilities, who receives the part in the course of their official duties;

(ii) A holder of a special exception permit which authorizes the take, import, or other activity involving the possession of a marine mammal part of the same species as the subject part; or

(iii) In the case of marine mammal parts from a species that is not depleted, endangered or threatened, a person who is authorized under section 112(c) of the MMPA and subpart C of this part to take or import marine mammals or marine mammal parts;

(iv) Any other person specifically authorized by the Regional Director, consistent with the requirements of paragraphs (a)(1) and (a)(3) through (6) of this section.

(3) The marine mammal part is transferred for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program;

(4) A unique number assigned by the permit holder is marked on or affixed to the marine mammal part or container;

(5) The person receiving the marine mammal part agrees that, as a condition of receipt, subsequent transfers may only occur subject to the provisions of paragraph (a) of this section; and

(6) Within 30 days after the transfer, the person transferring the marine mammal part notifies the Regional Director of the transfer, including a description of the part, the person to whom the part was transferred, the purpose of the transfer, certification that the recipient has agreed to comply with the requirements of paragraph (a) of this section for subsequent transfers, and, if applicable, the recipient's permit number.

(b) Marine mammal parts may be loaned to another person for a purpose described in paragraph (a)(3) of this section and without the agreement and notification required under paragraphs (a)(5) and (6) of this section, if:

(1) A record of the loan is maintained; and

(2) The loan is for not more than one year. Loans for a period greater than 12 months, including loan extensions or renewals, require notification of the Regional Director under paragraph (a)(6).

(c) Unless other disposition is specified in the permit, a holder of a special exception permit may retain marine mammal parts not destroyed or otherwise disposed of during or after a scientific research or enhancement activity, if such marine mammal parts are:

(1) Maintained as part of a properly curated, professionally accredited collection; or

(2) Made available for purposes of scientific research or enhancement at the request of the Office Director.

(d) Marine mammal parts may be exported and subsequently reimported by a permit holder or subsequent authorized recipient, for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that:

(1) The permit holder or other person receives no remuneration for the marine mammal part;

(2) A unique number assigned by the permit holder is marked on or affixed to the marine mammal specimen or container;

(3) The marine mammal part is exported or reimported in compliance with all applicable domestic and foreign laws;

(4) If exported or reimported for educational purposes, the recipient is a museum, educational institution, or equivalent that will ensure that the part is available to the public as part of an educational program; and

(5) Special reports are submitted within 30 days after both export and reimport as required by the Office Director under §216.38.

§ 216.38 Reporting.

All permit holders must submit annual, final, and special reports in accordance with the requirements established in the permit, and any reporting format established by the Office Director.

§ 216.39 Permit amendments.

(a) *General.* Special exception permits may be amended by the Office Director. Major and minor amendments may be made to permits in response to, or independent of, a request from the permit holder. Amendments must be consistent with the Acts and comply with the applicable provisions of this subpart.

(1) A *major amendment* means any change to the permit specific conditions under §216.36(a) regarding:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which these marine mammals may be taken, imported, exported, or otherwise affected, if the proposed change may result in an increased level of take or risk of adverse impact;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, and to which they may be exported, as applicable; and

(iv) The duration of the permit, if the proposed extension would extend the duration of the permit more than 12 months beyond that established in the original permit.

(2) A *minor amendment* means any amendment that does not constitute a major amendment.

(b) *Amendment requests and proposals.* (1) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(i) The purpose and nature of the amendment;

(ii) Information, not previously submitted as part of the permit application or subsequent reports, necessary to determine whether the amendment satisfies all issuance criteria set forth at §216.34, and, as appropriate, §216.41, §216.42, and §216.43.

(iii) Any additional information required by the Office Director for purposes of reviewing the proposed amendment.

(2) If an amendment is proposed by the Office Director, the permit holder will be notified of the proposed amendment, together with an explanation.

(c) *Review of proposed amendments* —(1) *Major amendments.* The provisions of §216.33(d) and (e) governing notice of receipt, review and decision shall apply to all proposed major amendments.

(2) *Minor amendments.* (i) After reviewing all appropriate information, the Office Director will provide the permit holder with written notice of the decision on a proposed or requested amendment, together with an explanation for the decision.

(ii) If the minor amendment extends the duration of the permit 12 months or less from that established in the original permit, notice of the minor amendment will be published in the Federal Register within 10 days from the date of the Office Director's decision.

(iii) A minor amendment will be effective upon a final decision by the Office Director.

[61 FR 21937, May 10, 1996]

§ 216.40 Penalties and permit sanctions.

(a) Any person who violates any provision of this subpart or permit issued thereunder is subject to civil and criminal penalties, permit sanctions and forfeiture as authorized under the Acts, and 15 CFR part 904.

(b) All special exception permits are subject to suspension, revocation, modification and denial in accordance with the provisions of subpart D of 15 CFR part 904.

[61 FR 21938, May 10, 1996]

§ 216.41 Permits for scientific research and enhancement.

In addition to the requirements under §§216.33 through 216.38, permits for scientific research and enhancement are governed by the following requirements:

(a) *Applicant.* (1) For each application submitted under this section, the applicant shall be the principal investigator responsible for the overall research or enhancement activity. If the research or enhancement activity will involve a periodic change in the principal investigator or is otherwise controlled by and dependent upon another entity, the applicant may be the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) For any scientific research involving captive maintenance, the application must include supporting documentation from the person responsible for the facility or other temporary enclosure.

(b) *Issuance Criteria.* For the Office Director to issue any scientific research or enhancement permit, the applicant must demonstrate that:

(1) The proposed activity furthers a bona fide scientific or enhancement purpose;

(2) If the lethal taking of marine mammals is proposed:

(i) Non-lethal methods for conducting the research are not feasible; and

(ii) For depleted, endangered, or threatened species, the results will directly benefit that species or stock, or will fulfill a critically important research need.

(3) Any permanent removal of a marine mammal from the wild is consistent with any applicable quota established by the Office Director.

(4) The proposed research will not likely have significant adverse effects on any other component of the marine ecosystem of which the affected species or stock is a part.

(5) For species or stocks designated or proposed to be designated as depleted, or listed or proposed to be listed as endangered or threatened:

(i) The proposed research cannot be accomplished using a species or stock that is not designated or proposed to be designated as depleted, or listed or proposed to be listed as threatened or endangered;

(ii) 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 or stock;

(iii) The proposed research will either:

(A) Contribute to fulfilling a research need or objective identified in a species recovery or conservation plan, or if there is no conservation or recovery plan in place, a research need or objective identified by the Office Director in stock assessments established under section 117 of the MMPA;

(B) Contribute significantly to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving conservation problems for the species or stock; or

(C) Contribute significantly to fulfilling a critically important research need.

(6) For proposed enhancement activities:

(i) Only living marine mammals and marine mammal parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit. Marine mammal parts would include in this regard clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

(ii) The activity will likely contribute significantly to maintaining or increasing distribution or abundance, enhancing the health or welfare of the species or stock, or ensuring the survival or recovery of the affected species or stock in the wild.

(iii) The activity is consistent with:

(A) An approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed under section 4(f) of the ESA for the species or stock; or

(B) If there is no conservation or recovery plan, with the Office Director's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.

(iv) An enhancement permit may authorize the captive maintenance of a marine mammal from a threatened, endangered, or depleted species or stock only if the Office Director determines that:

(A) The proposed captive maintenance will likely contribute directly to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and

(B) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of marine mammals from the wild.

(v) The Office Director may authorize the public display of marine mammals held under the authority of an enhancement permit only if:

(A) The public display is incidental to the authorized captive maintenance;

(B) The public display will not interfere with the attainment of the survival or recovery objectives;

(C) The marine mammals will be held consistent with all requirements and standards that are applicable to marine mammals held under the authority of the Acts and the Animal Welfare Act, unless the Office Director determines that an exception is necessary to implement an essential enhancement activity; and

(D) The marine mammals will be excluded from any interactive program and will not be trained for performance.

(vi) The Office Director may authorize non-intrusive scientific research to be conducted while a marine mammal is held under the authority of an enhancement permit, only if such scientific research:

(A) Is incidental to the permitted enhancement activities; and

(B) Will not interfere with the attainment of the survival or recovery objectives.

(c) *Restrictions.* (1) The following restrictions apply to all scientific research permits issued under this subpart:

(i) Research activities must be conducted in the manner authorized in the permit.

(ii) Research results shall be published or otherwise made available to the scientific community in a reasonable period of time.

(iii) Research activities must be conducted under the direct supervision of the principal investigator or a co-investigator identified in the permit.

(iv) Personnel involved in research activities shall be reasonable in number and limited to:

(A) Individuals who perform a function directly supportive of and necessary to the permitted research activity; and

(B) Support personnel included for the purpose of training or as backup personnel for persons described in paragraph (c)(1)(iv)(A).

(v) Any marine mammal part imported under the authority of a scientific research permit must not have been obtained as the result of a lethal taking that would be inconsistent with the Acts, unless authorized by the Office Director.

(vi) Marine mammals held under a permit for scientific research shall not be placed on public display, included in an interactive program or activity, or trained for performance unless such activities:

(A) Are necessary to address scientific research objectives and have been specifically authorized by the Office Director under the scientific research permit; and

(B) Are conducted incidental to and do not in any way interfere with the permitted scientific research; and

(C) Are conducted in a manner consistent with provisions applicable to public display, unless exceptions are specifically authorized by the Office Director.

(vii) Any activity conducted incidental to the authorized scientific research activity must not involve any taking of marine mammals beyond what is necessary to conduct the research (i.e., educational and commercial photography).

(2) Any marine mammal or progeny held in captive maintenance under an enhancement permit shall be returned to its natural habitat as soon as feasible, consistent with the terms of the enhancement permit and the objectives of an approved conservation or recovery plan. In accordance with section 10(j) of the ESA, the Office Director may authorize the release of any population of an endangered or threatened species outside the current range of such species if the Office Director determines that such release will further the conservation of such species.

[61 FR 21938, May 10, 1996]

§ 216.42 Photography. [Reserved]

§ 216.43 Public display. [Reserved]

§ 216.44 Applicability/transition.

(a) *General.* The regulations of this subpart are applicable to all persons, including persons holding permits or other authorizing documents issued before June 10, 1996, by NMFS for the take, import, export, or conduct of any otherwise prohibited activity involving a marine mammal or marine mammal part for special exception purposes.

(b) *Scientific research.* Any intrusive research as defined in §216.3, initiated after June 10, 1996, must be authorized under a scientific research permit. Intrusive research authorized by the Office Director to be conducted on captive marine mammals held for public display purposes prior to June 10, 1996, must be authorized under a scientific research permit one year after June 10, 1996.

[61 FR 21939, May 10, 1996]

§ 216.45 General Authorization for Level B harassment for scientific research.

(a) *General Authorization.* (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in §216.3, for purposes of bona fide scientific research *Provided, That:*

(i) They submit a letter of intent in accordance with the requirements of paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217–227, particularly at §222.23 through §222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) *Letter of intent.* Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in §216.3; and

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) *Confirmation that the General Authorization applies or notification of permit requirement.* (1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in §216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the Federal Register notifying the public of letters of confirmation issued.

(d) *Terms and conditions.* Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section;

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and

(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) *Suspension, revocation, or modification.* (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS; or

(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

[59 FR 50376, Oct. 3, 1994]

§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA's provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation that is participating in, and in compliance with, the IDCP.

[65 FR 56, Jan. 3, 2000]

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) *Applications for the National Marine Mammal Tissue Bank samples (NMMTB)*. (1) A principal investigator, contributor or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, Office of Protected Resources, NMFS. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use of the banked tissue is consistent with the goals of the NMMTB and the MMHSRP.

(A) The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues;

(vi) Verification that funding is available to conduct the research;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager and the contributor; and the sequences of tissue specimen samples that are used/released for genetic analyses (DNA sequencing) will be archived in the National Center for biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that identifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management Service (MMS), NMFS, the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date that the request was sent to the contributor(s).

(5) The USFWS Representative of the NMMTB Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph (a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) [Reserved]

[69 FR 41979, July 13, 2004]

§§ 216.48-216.49 [Reserved]

Title 50: Wildlife and Fisheries

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

Subpart C—General Permit Procedures

§ 222.301 General requirements.

(a)(1) The regulations in this subpart C provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 222, 223, and 224 of this chapter. While this section provides generic rules and procedures applicable to all permits, other sections may provide more specific rules and procedures with respect to certain types of permits. In such cases, the requirements in all applicable sections must be satisfied.

(2) Notwithstanding paragraph (a)(1) of this section, the Assistant Administrator may approve variations from the requirements of parts 222, 223, and 224 of this chapter when the Assistant Administrator finds that an emergency exists and that the proposed variations will not hinder effective administration of those parts and will not be unlawful. Other sections within parts 222, 223, and 224 of this chapter may allow for a waiver or variation of specific requirements for emergency situations, upon certain conditions. In such cases, those conditions must be satisfied in order for the waiver or variation to be lawful.

(b) No person shall take, import, export or engage in any other prohibited activity involving any species of fish or wildlife under the jurisdiction of the Secretary of Commerce that has been determined to be endangered under the Act, or that has been determined to be threatened and for which the prohibitions of section 9(a)(1) of the Act have been applied by regulation, without a valid permit issued pursuant to these regulations. The permit shall entitle the person to whom it is issued to engage in the activity specified in the permit, subject to the limitations of the Act and the regulations in parts 222, 223, and 224 of this chapter, for the period stated on the permit, unless sooner modified, suspended or revoked.

(c) Each person intending to engage in an activity for which a permit is required by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter must apply for such permit in accordance with the requirements of these sections. If the information required for each specific, permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

(d)(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or of an agent of such person) while any animal subject to the permit is in the possession of such person or agent. Specifically, a person or his/her agent must be in possession of a permit during the time of the authorized taking, importation, exportation, or of any other act and during the period of any transit incident to such taking, importation, exportation, or to any other act.

(2) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

(e) The authorizations on the face of a permit setting forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

(f) Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

(g) Any permit issued under parts 222, 223, and 224 of this chapter shall be displayed for inspection, upon request, to an authorized officer, or to any other person relying upon its existence.

(h) Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of parts 222, 223, or 224 of this chapter or the provisions of the permit set forth other reporting requirements.

(i) From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be kept current and shall include the names and addresses of persons with whom any fish or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

(j) Any person holding a permit pursuant to parts 222, 223, and 224 of this chapter shall allow the Assistant Administrator to enter the permit holder's premises at any reasonable hour to inspect any fish or wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by these regulations or by the Act. Such person shall display any permit issued pursuant to these regulations or to the Act upon request by an authorized officer or by any other person relying on its existence.

§ 222.302 Procedure for obtaining permits.

(a) Applications must be submitted to the Assistant Administrator, by letter containing all necessary information, attachments, certification, and signature, as specified by the regulations in parts 222, 223, and 224 of this chapter, or by the Act. In no case, other than for emergencies pursuant to §222.301(a)(2), will applications be accepted either orally or by telephone.

(b) Applications must be received by the Assistant Administrator at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective, unless otherwise specified in the regulations or guidelines pertaining to a particular permit. The National Marine Fisheries Service will attempt to process applications deemed sufficient in the shortest possible time, but does not guarantee that the permit will be issued 90 days after notice of receipt of the application is published in the Federal Register.

(c)(1) Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

(2) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part. The Assistant Administrator, however, may waive any requirement for information or require any elaboration or further information deemed necessary.

§ 222.303 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless an emergency pursuant to §222.301(a)(2) exists, and a written variation from the requirements is recorded by the National Marine Fisheries Service.

(2) No representation of an employee or agent of the United States shall be construed as a permit unless it meets the requirements of a permit defined in §222.102.

(3) Each permit shall bear a serial number. Upon renewal, such a number may be reassigned to the permittee to whom issued so long as the permittee maintains continuity of renewal.

(b) When an application for a permit received by the Assistant Administrator is deemed sufficient, the Assistant Administrator shall, as soon as practicable, publish a notice in the Federal Register. Information received by the Assistant Administrator as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party, within 30 days after the date of publication of such notice, may submit to the Assistant Administrator written data, views, or arguments with respect to the taking, importation, or to other action proposed in the application, and may request a hearing in connection with the action to be taken thereon.

(c) If a request for a hearing is made within the 30-day period referred to in paragraph (b) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in paragraph (b) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the Federal Register not less than 15 days in advance of such hearing. Any interested person may appear at the hearing in person or through a representative and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(d) Except as provided in subpart D to 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing. If no hearing is held, as soon as practicable but not later than 30 days from the publication of the notice in the Federal Register, the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the Federal Register within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(e)(1) The Assistant Administrator shall issue the permit unless:

(i) Denial of the permit has been made pursuant to subpart D to 15 CFR part 904;

(ii) The applicant has failed to disclose material or information required, or has made false statements as to any material fact, in connection with the application;

(iii) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(iv) The authorization requested potentially threatens a fish or wildlife population; or

(v) The Assistant Administrator finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the Assistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under §222.308, the Assistant Administrator shall publish notice thereof in the Federal Register, including the Assistant Administrator's finding that such permit—

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of such endangered species; and

(3) Will be consistent with the purposes and policy set forth in section 2 of the Act.

(g) The Assistant Administrator may waive the 30-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published by the Assistant Administrator in the Federal Register within 10 days following the issuance of the permit.

§ 222.304 Renewal of permits.

When the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, the permittee shall, unless otherwise notified in writing by the Assistant Administrator, file a request for permit renewal, together with a certified statement, verifying that the information in the original application is still currently correct. If the information is incorrect the permittee shall file a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of the permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by the expired permit until the renewal application is acted upon.

§ 222.305 Rights of succession and transfer of permits.

(a)(1) Except as otherwise provided in this section, permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain business activities in connection with a business or commercial enterprise, which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraphs (a)(2) and (a)(3) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

(i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and

(ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(3) Incidental take permits issued under §222.307, and enhancement permits issued under §222.308, as part of a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances, may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided NMFS determines in writing that:

(i) The proposed transferee meets all of the qualifications under parts 222, 223, or 224 (as applicable) for holding a permit;

(ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit.

[64 FR 14054, Mar. 23, 1999, as amended at 67 FR 57973, Sept. 13, 2002]

Effective Date Note: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of §222.305, paragraph (a), which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) *Scope.* (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

(1) The type of application, either:

(i) Application for an Individual Incidental Take Permit under the Act; or

(ii) Application for a General Incidental Take Permit under the Act;

(2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;

(3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;

(4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;

- (5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:
- (i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;
 - (ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;
 - (iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;
 - (iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and
 - (v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.
- (c) *Issuance criteria.* (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:
- (i) The status of the affected species or stocks;
 - (ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;
 - (iii) The availability of effective monitoring techniques;
 - (iv) The use of the best available technology for minimizing or mitigating impacts; and
 - (v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.
- (2) To issue the permit, the Assistant Administrator must find that—
- (i) The taking will be incidental;
 - (ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;
 - (iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
 - (iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and
 - (v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.
- (d) *Permit conditions.* In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:
- (1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;
 - (2) The species and number of animals covered;
 - (3) The authorized method of taking;
 - (4) The procedures to be used to handle or dispose of any animals taken; and
 - (5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.
- (e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate assurances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.
- (f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:
- (i) The general incidental take permit under which the applicant wants coverage;
 - (ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;
 - (iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and
 - (iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.
- (2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:
- (i) The applicant will be engaged in the activity covered by the general permit, and
 - (ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.
- (g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances

provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in §222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(1) Title, as applicable, either—

(i) Application for permit for scientific purposes under the Act; or

(ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

(4) A description of the purpose of the proposed acts, including the following:

(i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and

(ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:

(i) The period of time over which the project or program will be conducted;

(ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;

(iii) A copy of the formal research proposal or contract if one has been prepared;

- (iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how?; and
- (v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.
- (6) A description of the endangered species which is the subject of the application, including the following:
- (i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;
 - (ii) A physical description of each animal, including the age, size, and sex;
 - (iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;
 - (iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;
 - (v) A description of the manner of taking for each animal, including the gear to be used;
 - (vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and
 - (vii) If the capture or other taking is to be done by a contractor, a statement as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.
- (7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:
- (i) Mode of transportation;
 - (ii) Name of transportation company;
 - (iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;
 - (iv) Length of time in transit for any planned future move or transfer of the animals;
 - (v) The qualifications of the common carrier or agent used for transportation of the animals;
 - (vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;
 - (vii) Special care before and during transportation, such as salves, antibiotics, moisture; and
 - (viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.
- (8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:
- (i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;
 - (ii) The water supply, amount, and quality;
 - (iii) The diet, amount and type, for all animals;
 - (iv) Sanitation practices used;
 - (v) Qualifications and experience of the staff;
 - (vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certificate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian's opinion, they are adequate to provide for the well-being of the animal; and
 - (vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.
- (9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.
- (10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.
- (11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:
- (i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;
 - (ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;
 - (iii) The cause(s) of any such mortality; and
 - (iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301-713-1401. Allow at least 90 days for processing.

(c) *Issuance criteria.* In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant's qualifications for the proper care and maintenance of the species and the adequacy of the applicant's facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) *Terms and conditions.* Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care, and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny, or the species product; and

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing of those activities under its jurisdiction. Based on this review and processing, WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

§ 222.310 Permit authority for designated agents and employees of specified Federal and state agencies.

(a) This section constitutes a programmatic permit, pursuant to 16 U.S.C. 1539(a)(1)(A), that authorizes activities by agents and employees of Federal and state agencies, as described in paragraph (b) of this section, to aid stranded endangered sea turtles, and to salvage, collect data from, and dispose of, dead carcasses of endangered sea turtles in the marine environment. For purposes of this section, 'stranded' means endangered sea turtles, in the marine environment, that are alive but sick, injured, or entangled.

(b) If any member of any endangered species of sea turtle is found stranded or dead in the marine environment, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such endangered sea turtles if such taking is necessary to aid a stranded sea turtle, or dispose of or salvage a dead sea turtle, or collect data from a dead sea turtle which may be useful for scientific and educational purposes. Live turtles will be handled as described in §223.206(d)(1). Whenever possible, live sea turtles shall be returned to their aquatic environment as soon as possible. The following data collection activities for live turtles while they are in the marine environment are allowed:

(1) Turtles may be flipper and passive integrated transponder (PIT) tagged, prior to release. Flipper tags would be applied to the trailing edge of either the front or rear flippers with standard tagging applicators after the tagging area has been cleaned with alcohol or iodine solution. PIT tags would be inserted according to best practice, approved scientific protocols, after cleaning the insertion site with alcohol or iodine solution. Before application of flipper tags or insertion of PIT tags, all flippers and the neck/shoulder area will be examined and scanned for the presence of any pre-existing flipper or PIT tags.

(2) Turtles may also be weighed, measured, and photographed prior to release.

(3) When handling turtles exhibiting fibropapilloma, all equipment (tagging equipment, tape measures, etc.) that comes in contact with the turtle shall be cleaned with a mild bleach solution.

(c) Every action shall be reported in writing to the Assistant Administrator, or authorized representative, via the agency or institution designated by the state to record such events. Reports shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the sea turtle(s) involved including species and condition of the animal;

(3) When applicable, description of entangling gear, its location on the turtle, and the amount of gear left on the turtle at release;

(4) Method, date and location of disposal of the sea turtle(s), including, if applicable, where the sea turtle(s) has been retained in captivity; and

(5) Such other information as the Assistant Administrator, or authorized representative, may require.

[70 FR 42509, July 25, 2005]

ENDANGERED SPECIES ACT OF 1973¹

AN ACT To provide for the conservation of endangered and threatened species of fish, wildlife, and plants, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the “Endangered Species Act of 1973”.

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FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) the United States has pledged itself as a sovereign state in the international community to conserve to the extent

¹As amended by P.L. 94–325, June 30, 1976; P.L. 94–359, July 12, 1976; P.L. 95–212, December 19, 1977; P.L. 95–632, November 10, 1978; P.L. 96–159, December 28, 1979; 97–304, October 13, 1982; P.L. 98–327, June 25, 1984; and P.L. 100–478, October 7, 1988; P.L. 100–653, November 14, 1988; and P.L. 100–707, November 23, 1988.

²Bracketed material does *not* appear in Act. Sec. 1012 of P.L. 100–478, 102 Stat. 2314, October 7, 1988, added sec. 18 of the Act but did not conform the table of contents of the Act.

practicable the various species of fish or wildlife and plants facing extinction, pursuant to—

- (A) migratory bird treaties with Canada and Mexico;
 - (B) the Migratory and Endangered Bird Treaty with Japan;
 - (C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;
 - (D) the International Convention for the Northwest Atlantic Fisheries;
 - (E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;
 - (F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and
 - (G) other international agreements; and
- (5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citizens, the Nation's heritage in fish, wildlife, and plants.

(b) PURPOSES.—The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY.—(1) It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

(2) It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species.

(16 U.S.C. 1531)

DEFINITIONS

SEC. 3. For the purposes of this Act—

(1) The term “alternative courses of action” means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

(2) The term “commercial activity” means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms “conserve,” “conserving,” and “conservation” mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are

ited into a special fund known as the cooperative endangered species conservation fund, to be administered by the Secretary, an amount equal to five percent of the combined amounts covered each fiscal year into the Federal aid to wildlife restoration fund under section 3 of the Act of September 2, 1937, and paid, transferred, or otherwise credited each fiscal year to the Sport Fishing Restoration Account established under 1016 of the Act of July 18, 1984.

(2) Amounts deposited into the special fund are authorized to be appropriated annually and allocated in accordance with subsection (d) of this section.

(16 U.S.C. 1535)

INTERAGENCY COOPERATION

SEC. 7. (a) FEDERAL AGENCY ACTIONS AND CONSULTATIONS.—

(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act.

(2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section. In fulfilling the requirements of this paragraph each agency shall use the best scientific and commercial data available.

(3) Subject to such guidelines as the Secretary may establish, a Federal agency shall consult with the Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or a threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species.

(4) Each Federal agency shall confer with the Secretary on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. This paragraph does not require a limitation on the commitment of resources as described in subsection (d).

(b) OPINION OF SECRETARY.—(1)(A) Consultation under subsection (a)(2) with respect to any agency action shall be concluded within the 90-day period beginning on the date on which initiated or, subject to subparagraph (B), within such other period of time as is mutually agreeable to the Secretary and the Federal agency.

(B) In the case of an agency action involving a permit or license applicant, the Secretary and the Federal agency may not mutually agree to conclude consultation within a period exceeding 90 days unless the Secretary, before the close of the 90th day referred to in subparagraph (A)—

(i) if the consultation period proposed to be agreed to will end before the 150th day after the date on which consultation was initiated, submits to the applicant a written statement setting forth—

(I) the reasons why a longer period is required;

(II) the information that is required to complete the consultation; and

(III) the estimated date on which consultation will be completed; or

(ii) if the consultation period proposed to be agreed to will end 150 or more days after the date on which consultation was initiated, obtains the consent of the applicant to such period.

The Secretary and the Federal agency may mutually agree to extend a consultation period established under the preceding sentence if the Secretary, before the close of such period, obtains the consent of the applicant to the extension.

(2) Consultation under subsection (a)(3) shall be concluded within such period as is agreeable to the Secretary, the Federal agency, and the applicant concerned.

(3)(A) Promptly after conclusion of consultation under paragraph (2) or (3) of subsection (a), the Secretary shall provide to the Federal agency and the applicant, if any, a written statement setting forth the Secretary's opinion, and a summary of the information on which the opinion is based, detailing how the agency action affects the species or its critical habitat. If jeopardy or adverse modification is found, the Secretary shall suggest those reasonable and prudent alternatives which he believes would not violate subsection (a)(2) and can be taken by the Federal agency or applicant in implementing the agency action.

(B) Consultation under subsection (a)(3), and an opinion based by the Secretary incident to such consultation, regarding an agency action shall be treated respectively as a consultation under subsection (a)(2), and as an opinion issued after consultation under such subsection, regarding that action if the Secretary reviews the action before it is commenced by the Federal agency and finds, and notifies such agency, that no significant changes have been made with respect to the action and that no significant change has occurred regarding the information used during the initial consultation.

(4) If after consultation under subsection (a)(2) of this section, the Secretary concludes that—

(A) the agency action will not violate such subsection, or offers reasonable and prudent alternatives which the Secretary believes would not violate such subsection;

(B) the taking of an endangered species or a threatened species incidental to the agency action will not violate such subsection; and

(C) if an endangered species or threatened species of a marine mammal is involved, the taking is authorized pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972. the Secretary shall provide the Federal agency and the applicant concerned, if any, with a written statement that—

(i) specifies the impact of such incidental taking on the species,

(ii) specifies those reasonable and prudent measures that the Secretary considers necessary or appropriate to minimize such impact,

(iii) in the case of marine mammals, specifies those measures that are necessary to comply with section 101(a)(5) of the Marine Mammal Protection Act of 1972 with regard to such taking, and

(iv) sets forth the terms and conditions (including, but not limited to, reporting requirements) that must be complied with by the Federal agency or applicant (if any), or both, to implement the measures specified under clauses (ii) and (iii).

(c) BIOLOGICAL ASSESSMENT.—(1) To facilitate compliance with the requirements of subsection (a)(2) each Federal agency shall, with respect to any agency action of such agency for which no contract for construction has been entered into and for which no construction has begun on the date of enactment of the Endangered Species Act Amendments of 1978, request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action. If the Secretary advises, based on the best scientific and commercial data available, that such species may be present, such agency shall conduct a biological assessment for the purpose of identifying any endangered species or threatened species which is likely to be affected by such action. Such assessment shall be completed within 180 days after the date on which initiated (or within such other period as in mutually agreed to by the Secretary and such agency, except that if a permit or license applicant is involved, the 180-day period may not be extended unless such agency provides the applicant, before the close of such period, with a written statement setting forth the estimated length of the proposed extension and the reasons therefor) and, before any contract for construction is entered into and before construction is begun with respect to such action. Such assessment may be undertaken as part of a Federal agency's compliance with the requirements of section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332).

(2) Any person who may wish to apply for an exemption under subsection (g) of this section for that action may conduct a biological assessment to identify any endangered species or threatened species which is likely to be affected by such action. Any such biological assessment must, however, be conducted in cooperation with the Secretary and under the supervision of the appropriate Federal agency.

(d) LIMITATION ON COMMITMENT OF RESOURCES.—After initiation of consultation required under subsection (a)(2), the Federal agency and the permit or license applicant shall not make any irreversible or irretrievable commitment of resources with respect to the agency action which has the effect of foreclosing the formula-

tion or implementation of any reasonable and prudent alternative measures which would not violate subsection (a)(2).

(e)(1) ESTABLISHMENT OF COMMITTEE.—There is established a committee to be known as the Endangered Species Committee (hereinafter in this section referred to as the “Committee”).

(2) The Committee shall review any application submitted to it pursuant to this section and determine in accordance with subsection (h) of this section whether or not to grant an exemption from the requirements of subsection (a)(2) of this action for the action set forth in such application.

(3) The Committee shall be composed of seven members as follows:

(A) The Secretary of Agriculture.

(B) The Secretary of the Army.

(C) The Chairman of the Council of Economic Advisors.

(D) The Administrator of the Environmental Protection Agency. Agency.¹

(E) The Secretary of the Interior.

(F) The Administrator of the National Oceanic and Atmospheric Administration.

(G) The President, after consideration of any recommendations received pursuant to subsection (g)(2)(B) shall appoint one individual from each affected State, as determined by the Secretary, to be a member of the Committee for the consideration of the application for exemption for an agency action with respect to which such recommendations are made, not later than 30 days after an application is submitted pursuant to this section.

(4)(A) Members of the Committee shall receive no additional pay on account of their service on the Committee.

(B) While away from their homes or regular places of business in the performance of services for the Committee, members of the Committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5 of the United States Code²

(5)(A) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that, in no case shall any representative be considered in determining the existence of a quorum for the transaction of any function of the Committee if that function involves a vote by the Committee on any matter before the Committee.

(B) The Secretary of the Interior shall be the Chairman of the Committee.

(C) The Committee shall meet at the call of the Chairman or five of its members.

(D) All meetings and records of the Committee shall be open to the public.

(6) Upon request of the Committee, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of

¹So in law. At the end of section 7(e)(3)(D) of the Endangered Species Act of 1973, the second “Agency.” should had been stricken.

²So in law. At the end of section 7(e)(4)(B) of the Endangered Species Act of 1973, the period at end of the paragraph was omitted.

the personnel of such agency to the Committee to assist it in carrying out its duties under this section.

(7)(A) The Committee may for the purpose of carrying out its duties under this section hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Committee deems advisable.

(B) When so authorized by the Committee, any member or agent of the Committee may take any action which the Committee is authorized to take by this paragraph.

(C) Subject to the Privacy Act, the Committee may secure directly from any Federal agency information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Committee, the head of such Federal agency shall furnish such information to the Committee.

(D) The Committee may use the United States mails in the same manner and upon the same conditions as a Federal agency.

(E) The Administrator of General Services shall provide to the Committee on a reimbursable basis such administrative support services as the Committee may request.

(8) In carrying out its duties under this section, the Committee may promulgate and amend such rules, regulations, and procedures, and issue and amend such orders as it deems necessary.

(9) For the purpose of obtaining information necessary for the consideration of an application for an exemption under this section the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(10) In no case shall any representative, including a representative of a member designated pursuant to paragraph (3)(G) of this subsection, be eligible to cast a vote on behalf of any member.

(f) REGULATIONS.—Not later than 90 days after the date of enactment of the Endangered Species Act Amendments of 1978, the Secretary shall promulgate regulations which set forth the form and manner in which applications for exemption shall be submitted to the Secretary and the information to be contained in such applications. Such regulations shall require that information submitted in an application by the head of any Federal agency with respect to any agency action include but not be limited to—

(1) a description of the consultation process carried out pursuant to subsection (a)(2) of this section between the head of the Federal agency and the Secretary; and

(2) a statement describing why such action cannot be altered or modified to conform with the requirements of subsection (a)(2) of this section.

(g) APPLICATION FOR EXEMPTION AND REPORT TO THE COMMITTEE.—(1) A Federal agency, the Governor of the State in which an agency action will occur, if any, or a permit or license applicant may apply to the Secretary for an exemption for an agency action of such agency if, after consultation under subsection (a)(2), the Secretary's opinion under subsection (b) indicates that the agency action would violate subsection (a)(2). An application for an exemption shall be considered initially by the Secretary in the manner provided for in this subsection, and shall be considered by the Committee for a final determination under subsection (h) after a report

is made pursuant to paragraph (5). The applicant for an exemption shall be referred to as the "exemption applicant" in this section.

(2)(A) An exemption applicant shall submit a written application to the Secretary, in a form prescribed under subsection (f), not later than 90 days after the completion of the consultation process; except that, in the case of any agency action involving a permit or license applicant, such application shall be submitted not later than 90 days after the date on which the Federal agency concerned takes final agency action with respect to the issuance of the permit or license. For purposes of the preceding sentence, the term "final agency action" means (i) a disposition by an agency with respect to the issuance of a permit or license that is subject to administrative review, whether or not such disposition is subject to judicial review; or (ii) if administrative review is sought with respect to such disposition, the decision resulting after such review. Such application shall set forth the reasons why the exemption applicant considers that the agency action meets the requirements for an exemption under this subsection.

(B) Upon receipt of an application for exemption for an agency action under paragraph (1), the Secretary shall promptly (i) notify the Governor of each affected State, if any, as determined by the Secretary, and request the Governors so notified to recommend individuals to be appointed to the Endangered Species Committee for consideration of such application; and (ii) publish notice of receipt of the application in the Federal Register, including a summary of the information contained in the application and a description of the agency action with respect to which the application for exemption has been filed.

(3) The Secretary shall within 20 days after the receipt of an application for exemption, or within such other period of time as is mutually agreeable to the exemption applicant and the Secretary—

(A) determine that the Federal agency concerned and the exemption applicant have—

(i) carried out the consultation responsibilities described in subsection (a) in good faith and made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed agency action which would not violate subsection (a)(2);

(ii) conducted any biological assessment required by subsection (c); and

(iii) to the extent determinable within the time provided herein, refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d); or

(B) deny the application for exemption because the Federal agency concerned or the exemption applicant have not met the requirements set forth in subparagraph (A)(i), (ii), and (iii).

The denial of an application under subparagraph (B) shall be considered final agency action for purposes of chapter 7 of title 5, United States Code.

(4) If the Secretary determines that the Federal agency concerned and the exemption applicant have met the requirements set

forth in paragraph (3)(A) (i), (ii) and (iii) he shall, in consultation with the Members of the Committee, hold a hearing on the application for exemption in accordance with sections 554, 555, and 556 (other than subsection (b) (1) and (2) thereof) of title 5, United States Code, and prepare the report to be submitted pursuant to paragraph (5).

(5) Within 140 days after making the determinations under paragraph (3) or within such other period of time as in mutually agreeable to the exemption applicant and the Secretary, the Secretary shall submit to the Committee a report discussing—

(A) the availability and reasonable and prudent alternatives to the agency action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species of the critical habitat;

(B) a summary of the evidence concerning whether or not the agency action is in the public interest and is of national or regional significance;

(C) appropriate reasonable mitigation and enhancement measures which should be considered by the Committee; and

(D) whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by subsection (d).

(6) To the extent practicable within the time required for action under subsection (g) of this section, and except to the extent inconsistent with the requirements of this section, the consideration of any application for an exemption under this section and the conduct of any hearing under this subsection shall be in accordance with sections 554, 555, and 556 (other than subsection (b)(3) of section 556) of title 5, United States Code.

(7) Upon request of the Secretary, the head of any Federal agency is authorized to detail, on a nonreimbursable basis, any of the personnel of such agency to the Secretary to assist him in carrying out his duties under this section.

(8) All meetings and records resulting from activities pursuant to this subsection shall be open to the public.

(h) EXEMPTION.—(1) The Committee shall make a final determination whether or not to grant an exemption within 30 days after receiving the report of the Secretary pursuant to subsection (g)(5). The Committee shall grant an exemption from the requirements of subsection (a)(2) for an agency action if, by a vote of not less than five of its members voting in person—

(A) it determines on the record, based on the report of the Secretary, the record of the hearing held under subsection (g)(4), and on such other testimony or evidence as it may receive, that—

(i) there are no reasonable and prudent alternatives to the agency action;

(ii) the benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) the action is of regional or national significance; and

(iv) neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by subsection (d); and (B) it establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the agency action upon the endangered species, threatened species, or critical habitat concerned.

Any final determination by Committee under this subsection shall be considered final agency action for purposes of chapter 7 of title 5 of the United States Code.

(2)(A) Except as provided in subparagraph (B), an exemption for an agency action granted under paragraph (1) shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action—

(i) regardless whether the species was identified in the biological assessment; and

(ii) only if a biological assessment has been conducted under subsection (c) with respect to such agency action.

(B) An exemption shall be permanent under subparagraph (A) unless—

(i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under subsection (a)(2) or was not identified in any biological assessment conducted under subsection (c), and

(ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent.

If the Secretary makes a finding described in clause (i), the Committee shall meet with respect to the matter within 30 days after the date of the finding.

(i) REVIEW BY SECRETARY OF STATE.—Notwithstanding any other provision of this Act, the Committee shall be prohibited from considering for exemption any application made to it, if the Secretary of State, after a review of the proposed agency action and its potential implications, and after hearing, certifies, in writing, to the Committee within 60 days of any application made under this section that the granting of any such exemption and the carrying out of such action would be in violation of an international treaty obligation or other international obligation of the United States. The Secretary of State shall, at the time of such certification, publish a copy thereof in the Federal Register.

(j) Notwithstanding any other provision of this Act, the Committee shall grant an exemption for any agency action if the Secretary of Defense finds that such exemption is necessary for reasons of national security.

(k) SPECIAL PROVISIONS.—An exemption decision by the Committee under this section shall not be a major Federal action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.): *Provided*, That an environmental impact statement which discusses the impacts upon endangered species or threatened species or their critical habitats shall have been pre-

viously prepared with respect to any agency action exempted by such order.

(l) COMMITTEE ORDERS.—(1) If the Committee determines under subsection (h) that an exemption should be granted with respect to any agency action, the Committee shall issue an order granting the exemption and specifying the mitigation and enhancement measures established pursuant to subsection (h) which shall be carried out and paid for by the exemption applicant in implementing the agency action. All necessary mitigation and enhancement measures shall be authorized prior to the implementing of the agency action and funded concurrently with all other project features.

(2) The applicant receiving such exemption shall include the costs of such mitigation and enhancement measures within the overall costs of continuing the proposed action. Notwithstanding the preceding sentence the costs of such measures shall not be treated as project costs for the purpose of computing benefit-cost or other ratios for the proposed action. Any applicant may request the Secretary to carry out such mitigation and enhancement measures. The costs incurred by the Secretary in carrying out any such measures shall be paid by the applicant receiving the exemption. No later than one year after the granting of an exemption, the exemption applicant shall submit to the Council on Environmental Quality a report describing its compliance with the mitigation and enhancement measures prescribed by this section. Such report shall be submitted annually until all such mitigation and enhancement measures have been completed. Notice of the public availability of such reports shall be published in the Federal Register by the Council on Environmental Quality.

(m) NOTICE.—The 60-day notice requirement of section 11(g) of this Act shall not apply with respect to review of any final determination of the Committee under subsection (h) of this section granting an exemption from the requirements of subsection (a)(2) of this section.

(n) JUDICIAL REVIEW.—Any person, as defined by section 3(13) of this Act, may obtain judicial review, under chapter 7 of title 5 of the United States Code, of any decision of the Endangered Species Committee under subsection (h) in the United States Court of Appeals for (1) any circuit wherein the agency action concerned will be, or is being, carried out, or (2) in any case in which the agency action will be, or is being, carried out outside of any circuit, the District of Columbia, by filing in such court within 90 days after the date of issuance of the decision, a written petition for review. A copy of such petition shall be transmitted by the clerk of the court to the Committee and the Committee shall file in the court the record in the proceeding, as provided in section 2112, of title 28, United States Code. Attorneys designated by the Endangered Species Committee may appear for, and represent the Committee in any action for review under this subsection.

(o) EXEMPTION AS PROVIDING EXCEPTION ON TAKING OF ENDANGERED SPECIES.—Notwithstanding sections 4(d) and 9(a)(1)(B) and (C) of this Act, sections 101 and 102 of the Marine Mammal Protection Act of 1972, or any regulation promulgated to implement any such section—

(1) any action for which an exemption is granted under subsection (h) of this section shall not be considered to be a taking of any endangered species or threatened species with respect to any activity which is necessary to carry out such action; and

(2) any taking that is in compliance with the terms and conditions specified in a written statement provided under subsection (b)(4)(iv) of this section shall not be considered to be a prohibited taking of the species concerned.

(p) EXEMPTIONS IN PRESIDENTIALLY DECLARED DISASTER AREAS.—In any area which has been declared by the President to be a major disaster area under the Disaster Relief and Emergency Assistance Act, the President is authorized to make the determinations required by subsections (g) and (h) of this section for any project for the repair or replacement of a public facility substantially as it existed prior to the disaster under section 405 or 406 of the Disaster Relief and Emergency Assistance Act, and which the President determines (1) is necessary to prevent the recurrence of such a natural disaster and to reduce the potential loss of human life, and (2) to involve an emergency situation which does not allow the ordinary procedures of this section to be followed. Notwithstanding any other provision of this section, the Committee shall accept the determinations of the President under this subsection.

(16 U.S.C. 1536)

INTERNATIONAL COOPERATION

SEC. 8. (a) FINANCIAL ASSISTANCE.—As a demonstration of the commitment of the United States to the worldwide protection of endangered species and threatened species, the President may, subject to the provisions of section 1415 of the Supplemental Appropriation Act, 1953 (31 U.S.C. 724), use foreign currencies accruing to the United States Government under the Agricultural Trade Development and Assistance Act of 1954 or any other law to provide to any foreign country (with its consent) assistance in the development and management of programs in that country which the Secretary determines to be necessary or useful for the conservation of any endangered species or threatened species listed by the Secretary pursuant to section 4 of this Act. The President shall provide assistance (which includes, but is not limited to, the acquisition, by lease or otherwise, of lands, waters, or interests therein) to foreign countries under this section under such terms and conditions as he deems appropriate. Whenever foreign currencies are available for the provision of assistance under this section, such currencies shall be used in preference to funds appropriated under the authority of section 15 of this Act.

(b) ENCOURAGEMENT OF FOREIGN PROGRAMS.—In order to carry out further the provisions of this Act, the Secretary, through the Secretary of State shall encourage—

(1) foreign countries to provide for the conservation of fish or wildlife and plants including endangered species and threatened species listed pursuant to section 4 of this Act;

(2) the entering into of bilateral or multilateral agreements with foreign countries to provide for such conservation; and

(3) foreign persons who directly or indirectly take fish or wildlife or plants in foreign countries or on the high seas for importation into the United States for commercial or other purposes to develop and carry out with such assistance as he may provide, conservation practices designed to enhance such fish or wildlife or plants and their habitat.

(c) PERSONNEL.—After consultation with the Secretary of State, the Secretary may—

(1) assign or otherwise make available any officer or employee of his department for the purpose of cooperating with foreign countries and international organizations in developing personnel resources and programs which promote the conservation of fish or wildlife or plants, and

(2) conduct or provide financial assistance for the educational training of foreign personnel, in this country or abroad, in fish, wildlife, or plant management, research and law enforcement and to render professional assistance abroad in such matters.

(d) INVESTIGATIONS.—After consultation with the Secretary of State and the Secretary of the Treasury, as appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations and research abroad as he deems necessary to carry out the purposes of this Act.

(16 U.S.C. 1537)

CONVENTION IMPLEMENTATION

SEC. 8A. (a) MANAGEMENT AUTHORITY AND SCIENTIFIC AUTHORITY.—The Secretary of the Interior (hereinafter in this section referred to as the “Secretary”) is designated as the Management Authority and the Scientific Authority for purposes of the Convention and the respective functions of each such Authority shall be carried out through the United States Fish and Wildlife Service.

(b) MANAGEMENT AUTHORITY FUNCTIONS.—The Secretary shall do all things necessary and appropriate to carry out the functions of the Management Authority under the Convention.

(c) SCIENTIFIC AUTHORITY FUNCTIONS.—(1) The Secretary shall do all things necessary and appropriate to carry out the functions of the Scientific Authority under the Convention.

(2) The Secretary shall base the determinations and advice given by him under Article IV of the Convention with respect to wildlife upon the best available biological information derived from professionally accepted wildlife management practices; but is not required to make, or require any State to make, estimates of population size in making such determinations or giving such advice.

(d) RESERVATIONS BY THE UNITED STATES UNDER CONVENTION.—If the United States votes against including any species in Appendix I or II of the Convention and does not enter a reservation pursuant to paragraph (3) of Article XV of the Convention with respect to that species, the Secretary of State, before the 90th day after the last day on which such a reservation could be entered, shall submit to the Committee on Merchant Marine and Fisheries

of the House of Representatives, and to the Committee on the Environment and Public Works of the Senate, a written report setting forth the reasons why such a reservation was not entered.

(e) WILDLIFE PRESERVATION IN WESTERN HEMISPHERE.—(1) The Secretary of the Interior (hereinafter in this subsection referred to as the “Secretary”), in cooperation with the Secretary of State, shall act on behalf of, and represent, the United States in all regards as required by the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere (56 Stat. 1354, T.S. 982, hereinafter in this subsection referred to as the “Western Convention”). In the discharge of these responsibilities, the Secretary and the Secretary of State shall consult with the Secretary of Agriculture, the Secretary of Commerce, and the heads of other agencies with respect to matters relating to or affecting their areas of responsibility.

(2) The Secretary and the Secretary of State shall, in cooperation with the contracting parties to the Western Convention and, to the extent feasible and appropriate, with the participation of State agencies, take such steps as are necessary to implement the Western Convention. Such steps shall include, but not be limited to—

(A) cooperation with contracting parties and international organizations for the purpose of developing personnel resources and programs that will facilitate implementation of the Western Convention;

(B) identification of those species of birds that migrate between the United States and other contracting parties, and the habitats upon which those species depend, and the implementation of cooperative measures to ensure that such species will not become endangered or threatened; and

(C) identification of measures that are necessary and appropriate to implement those provisions of the Western Convention which address the protection of wild plants.

(3) No later than September 30, 1985, the Secretary and the Secretary of State shall submit a report to Congress describing those steps taken in accordance with the requirements of this subsection and identifying the principal remaining actions yet necessary for comprehensive and effective implementation of the Western Convention.

(4) The provisions of this subsection shall not be construed as affecting the authority, jurisdiction, or responsibility of the several States to manage, control, or regulate resident fish or wildlife under State law or regulations.

(16 U.S.C. 1537a)

PROHIBITED ACTS

SEC. 9. (a) GENERAL.—(1) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of fish or wildlife listed pursuant to section 4 of this Act it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from the United States;

(B) take any such species within the United States or the territorial sea of the United States;

(C) take any such species upon the high seas;

(D) possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of subparagraphs (B) and (C);

(E) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(F) sell or offer for sale in interstate or foreign commerce any such species; or

(G) violate any regulation pertaining to such species or to any threatened species of fish or wildlife listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(2) Except as provided in sections 6(g)(2) and 10 of this Act, with respect to any endangered species of plants listed pursuant to section 4 of this Act, it is unlawful for any person subject to the jurisdiction of the United States to—

(A) import any such species into, or export any such species from, the United States;

(B) remove and reduce to possession any such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any such area; or remove cut, dig up, or damage or destroy any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a state criminal trespass law;

(C) deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(D) sell or offer for sale in interstate or foreign commerce any such species; or

(E) violate any regulation pertaining to such species or to any threatened species of plants listed pursuant to section 4 of this Act and promulgated by the Secretary pursuant to authority provided by this Act.

(b)(1) SPECIES HELD IN CAPTIVITY OR CONTROLLED ENVIRONMENT.—The provisions of subsections (a)(1)(A) and (a)(1)(G) of this section shall not apply to any fish or wildlife which was held in captivity or in a controlled environment on (A) December 28, 1973, or (B) the date of the publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act: *Provided*, That such holding and any subsequent holding or use of the fish or wildlife as not in the course of a commercial activity. With respect to any act prohibited by subsections (a)(1)(A) and (a)(1)(G) of this section which occurs after a period of 180 days from (i) December 28, 1973, or (ii) the date of publication in the Federal Register of a final regulation adding such fish or wildlife species to any list published pursuant to subsection (c) of section 4 of this Act, there shall be a rebuttable presumption that the fish or wildlife involved in such act is not entitled to the exemption contained in this subsection.

(2)(A) The provisions of subsections (a)(1) shall not apply to—

(i) any raptor legally held in captivity or in a controlled environment on the effective date of the Endangered Species Act Amendments of 1978; or

(ii) any progeny of any raptor described in clause (i); until such time as any such raptor or progeny is intentionally returned to a wild state.

(B) Any person holding any raptor or progeny described in subparagraph (A) must be able to demonstrate that the raptor or progeny does, in fact, qualify under the provisions of this paragraph, and shall maintain and submit to the Secretary, on request, such inventories, documentation, and records as the Secretary may by regulation require as being reasonably appropriate to carry out the purposes of this paragraph. Such requirements shall not unnecessarily duplicate the requirements of other rules and regulations promulgated by the Secretary.

(c) VIOLATION OF CONVENTION.—(1) It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the Convention, or to possess any specimens traded contrary to the provisions of the Convention, including the definitions of terms in article I thereof.

(2) Any importation into the United States of fish or wildlife shall, if—

(A) such fish or wildlife is not an endangered species listed pursuant to section 4 of this Act but is listed in Appendix II of the Convention;

(B) the taking and exportation of such fish or wildlife is not contrary to the provisions of the Convention and all other applicable requirements of the Convention have been satisfied;

(C) the applicable requirements of subsection (d), (e), and (f) of this section have been satisfied; and

(D) such importation is not made in the course of a commercial activity;

be presumed to be an important not in violation of any provision of this Act or any regulation issued pursuant to this Act.

(d) IMPORTS AND EXPORTS.—

(1) IN GENERAL.—It is unlawful for any person, without first having obtained permission from the Secretary, to engage in business—

(A) as an importer or exporter of fish or wildlife (other than shellfish and fishery products which (i) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (ii) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants; or

(B) as an importer or exporter of any amount of raw or worked African elephant ivory.

(2) REQUIREMENTS.—Any person required to obtain permission under paragraph (1) of this subsection shall—

(A) keep such records as will fully and correctly disclose each importation or exportation of fish, wildlife, plants, or African elephant ivory made by him and the

subsequent disposition, made by him with respect to such fish, wildlife, plants, or ivory;

(B) at all reasonable times upon notice by a duly authorized representative of the Secretary, afford such representative access to his place of business, an opportunity to examine his inventory of imported fish, wildlife, plants, or African elephant ivory and the records required to be kept under subparagraph (A) of this paragraph, and to copy such records; and

(C) file such reports as the Secretary may require.

(3) REGULATIONS.—The Secretary shall prescribe such regulations as are necessary and appropriate to carry out the purposes of this subsection.

(4) RESTRICTION ON CONSIDERATION OF VALUE OF AMOUNT OF AFRICAN ELEPHANT IVORY IMPORTED OR EXPORTED.—In granting permission under this subsection for importation or exportation of African elephant ivory, the Secretary shall not vary the requirements for obtaining such permission on the basis of the value or amount of ivory imported or exported under such permission.

(e) REPORTS.—It is unlawful for any person importing or exporting fish or wildlife (other than shellfish and fishery products which (1) are not listed pursuant to section 4 of this Act as endangered or threatened species, and (2) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants to fail to file any declaration or report as the Secretary deems necessary to facilitate enforcement of this Act or to meet the obligations of the Convention.

(f) DESIGNATION OF PORTS.—(1) It is unlawful for any person subject to the jurisdiction of the United States to import into or export from the United States any fish or wildlife (other than shellfish and fishery products which (A) are not listed pursuant to section 4 of this Act as endangered species or threatened species, and (B) are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes) or plants, except at a port of ports designated by the Secretary of the Interior. For the purposes of facilitating enforcement of this Act and reducing the costs thereof, the Secretary of the Interior, with approval of the Secretary of the Treasury and after notice and opportunity for public hearing, may, by regulation, designate ports and change such designations. The Secretary of the Interior, under such terms and conditions as he may prescribe, may permit the importation or exportation at nondesignated ports in the interest of the health or safety of the fish or wildlife or plants, or for other reasons if, in his discretion, he deems it appropriate and consistent with the purpose of this subsection.

(2) Any port designated by the Secretary of the Interior under the authority of section 4(d) of the Act of December 5, 1969 (16 U.S.C. 666cc-4(d)), shall, if such designation is in effect on the day before the date of the enactment of this Act, be deemed to be a port designated by the Secretary under paragraph (1) of this subsection until such time as the Secretary otherwise provides.

(g) VIOLATIONS.—It is unlawful for any person subject to the jurisdiction of the United States to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in this section.

(16 U.S.C. 1538)

EXCEPTIONS

SEC. 10. (a) PERMITS.—(1) The Secretary may permit, under such terms and conditions as he shall prescribe—

(A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant subsection (j); or

(B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

(2)(A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies—

(i) the impact which will likely result from such taking;

(ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;

(iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and

(iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.

(B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that—

(i) the taking will be incidental;

(ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;

(iii) the applicant will ensure that adequate funding for the plan will be provided;

(iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(v) the measures, if any, required under subparagraph

(A)(iv) will be met;

and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.

(C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.

(b) **HARDSHIP EXEMPTIONS.**—(1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary; (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and (C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term “undue economic hardship” shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons (i) not reasonably able to secure other sources of subsistence; and (ii) dependent to a substantial extent upon hunting and fishing for subsistence; and (iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) **NOTICE AND REVIEW.**—The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Infor-

mation received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.—The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.—(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by—

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaska native village;

if such taking is primarily for subsistence purposes. Non-edible by-products of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection—

(i) The term “subsistence” includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

¹(ii) The term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect to natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical descrip-

¹ So in law. Section 10(e)(3)(ii) of the Endangered Species Act of 1973 paragraph indention is incorrect. Indention should be same as 10(e)(3)(i)

tion of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)(1) As used in this subsection—

(A) The term “pre-Act endangered species part” means—

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term “scrimshaw product” means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions.

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application—

(A) is received by the Secretary before the close of the one-year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify—

(A) any prohibition in section 9(a) of this Act which is exempted;

(B) the pre-Act endangered species parts to which the exemption applies;

(C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and

(D) any term or condition prescribed pursuant to paragraph (5) (A) or (B), or both, which the Secretary deems necessary or appropriate.

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth—

(A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register, inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and

(B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection;

to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.

(6)(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to—

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)(A)(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a 6-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made ap-

plicable by the previous certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, and pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) CERTAIN ANTIQUE ARTICLES.—(1) Sections 4(d), 9(a), and 9(c) do not apply to any article which—

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1) (A), (B), and (C).

(3) the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which—

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment;

may, before the close of the one-year period beginning on such date of enactment make application to the Secretary for return of the article. Application shall be made in such form and manner, and

contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) NONCOMMERCIAL TRANSSHIPMENTS.—Any importation into the United States of fish or wildlife shall, if—

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States en route to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity,

be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j) EXPERIMENTAL POPULATIONS.—(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that—

(i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and

(ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.

(3) The Secretary, with respect to population of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

(16 U.S.C. 1539)

PENALTIES AND ENFORCEMENT

SEC. 11. (a) CIVIL PENALTIES.—(1) Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of this Act, or any provision of any permit or certificate issued hereunder, or of any regulation issued in order to implement subsection (a)(1)(A), (B), (C), (D), (E), or (F), (a)(2)(A), (B), (C), or (D), (c), (d), (other than regulation relating to recordkeeping or filing or reports), (f), or (g) of section 9 of this Act, may be assessed a civil penalty by the Secretary of not more than \$25,000 for each violation. Any person who knowingly violates, and any person engaged in business as an importer or exporter of fish, wildlife, or plants who violates, any provision of any other regulation issued under this Act may be assessed a civil penalty by the Secretary of not more than \$12,000 for each such violation. Any person who otherwise violates any provision of this Act, or any regulation, permit, or certificate issued hereunder, may be assessed a civil penalty by the Secretary of not more than \$500 for each such violation. No penalty may be assessed under this subsection unless such person is given notice and opportunity for a hearing with respect to such violation. Each violation shall be a separate offense. Any such civil penalty may be remitted or mitigated by the Secretary. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute a civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty and such court shall have jurisdiction to hear and decide any such action. The court shall hear such action on the record made before the Secretary and shall sustain his action if it is supported by substantial evidence on the record considered as a whole.

(2) Hearings held during proceedings for the assessment of civil penalties by paragraph (1) of this subsection shall be conducted in accordance with section 554 of title 5, United States Code. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this para-

FUR SEAL ACT OF 1966¹

[Public Law 89-702, Approved Nov. 2, 1966, 80 Stat. 1091]

[As Amended Through P.L. 108-204, March 2, 2004]

AN ACT To protect and conserve the North Pacific fur seals, to provide for the administration of the Pribilof Islands, to conserve the fur seals and other wildlife on the Pribilof Islands, and to protect sea otters on the high seas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [16 U.S.C. 1151 note] This Act may be cited as the “Fur Seal Act of 1966”.

TITLE I—FUR SEAL MANAGEMENT

SEC. 101. [16 U.S.C. 1151] (a) “Commission” means the North Pacific Fur Seal Commission established pursuant to article V of the Convention.

(b) “Convention” means the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, as amended by the protocol signed in Washington on October 8, 1963; by the exchange of notes among the party governments which became effective on September 3, 1969; by the protocol signed in Washington on May 7, 1976; and by the protocol signed in Washington on October 14, 1980, by the parties.

(c) “Cure” or “curing” means the performance of those post-harvest activities traditionally performed on the Pribilof Islands, including cooling, washing, removal of blubber, soaking in brine, draining, treating with salt or boric acid, and packing in containers for shipment of fur seal skins.

(d) “Fur Seal” means the North Pacific Fur Seal, *Callorhinus Ursinus*.

(e) “Import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(f)² “Natives of the Pribilof Islands” means any Aleuts who are permanent residents of the Pribilof Islands, or any organization or entity representing such natives.

¹ Similar provisions relating to the Pribilof Islands, including amendments made to this Act, were enacted by section 144(e) of the Miscellaneous Appropriations Act, 2001 (P.L. 106-554; approved Dec. 21, 2000; 114 Stat. 2763A-244) and the Pribilof Islands Transition Act (P.L. 106-652; approved Dec. 23, 2000; 114 Stat. 2794).

² Effective upon the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, section 303 of Public Law 102-251 amends section 101 by redesignating subsections (f)–(m) as subsections (g)–(n) and inserts a new subsection (f) as follows:

Continued

(g) "North Pacific Ocean" means the waters of the Pacific Ocean north of the thirtieth parallel of north latitude, including the Bering, Okhotsk, and Japan Seas.

(h) "Party" or "parties" means the United States of America, Canada, Japan, and Russia (except that as used in subsection (b) of this section, "party" and "parties" refer to the Union of Soviet Socialist Republics).

(i) "Person" means any individual, partnership, corporation, trust, association or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(j) "Pribilof Islands" means the islands of Saint Paul and Saint George, Walrus and Otter Islands, and Sea Lion Rock.

(k) "Sealing" means the taking of fur seals.

(l) "Secretary" means the Secretary of Commerce.

(m) "Take" or "taking" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill.

SEC. 102. [16 U.S.C. 1152] It is unlawful, except as provided in this Act or by regulation of the Secretary, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States, or to use any port or harbor or other place under the jurisdiction of the United States for any purpose connected in any way with such taking, or for any person to transport, import, offer for sale, or possess at any port or place or on any vessel, subject to the jurisdiction of the United States, fur seals or the parts thereof, including, but not limited to, raw, dressed, or dyed fur seal skins, taken contrary to the provisions of this Act or the Convention, or for any person subject to the jurisdiction of the United States to refuse to permit, except within the Exclusive Economic Zone of the United States, a duly authorized official of Canada, Japan, or Russia to board and search any vessel which is outfitted for the harvesting of living marine resources and which is subject to the jurisdiction of the United States to determine whether such vessel is engaged in sealing contrary to the provisions of said Convention.

SEC. 103. [16 U.S.C. 1153] (a) Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals and dispose of their skins after the skins have been officially marked and certified by a person authorized by the Secretary: *Provided*, That the seals are taken for subsistence uses as defined in section 109(f)(2) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1379), and only in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms. This authority shall not apply to Indians,

"(f) 'Jurisdiction of the United States' includes jurisdiction over the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured."

Aleuts, and Eskimos while they are employed by any person for the purpose of taking fur seals or are under contract to deliver the skins to any person.

(b) Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 109(f)(2) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1379), under such conditions as recommended by the Commission and accepted by the Secretary of State pursuant to regulations promulgated by the Secretary.

SEC. 104. [16 U.S.C. 1154] The Secretary shall (1) conduct such scientific research and investigations on the fur seal resources of the North Pacific Ocean as he deems necessary to carry out the obligations of the United States under the Convention, and (2) permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

SEC. 105. [16 U.S.C. 1155] (a) The Secretary shall prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands and on lands subject to the jurisdiction of the United States as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population, and to dispose of any fur seals seized or forfeited pursuant to this Act, and to carry out the provisions of the Convention, and shall deliver to authorized agents of the parties such fur seal skins as the parties are entitled to under the Convention.

(b) The Secretary is authorized to enter into agreements with any public or private agency or person for the purpose of carrying out the provisions of the Convention and of this title, including but not limited to the taking of fur seals on the Pribilof Islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom.

(c) The Secretary shall give preference to the village corporations of Saint Paul and Saint George Islands established pursuant to section 8 of the Alaska Native Claims Settlement Act (Public Law 92-203) for the taking of fur seals on the village corporations' respective islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom. Any proceeds therefrom will be deposited in a separate fund in the Treasury and will be available to the Secretary, subject to appropriations, for the purpose of this section. All seal harvests will be financed, to the extent possible, from proceeds collected in preceding years or unsold assets retained from harvests conducted in preceding years. In the event that such assets and proceeds are insufficient, as determined by the Secretary, to finance the seal harvest in accordance with the requirements of the Convention, there are authorized to be appropriated to the Secretary for fiscal year 1984, and for fiscal year 1985 and beyond if the Convention is extended by protocol signed by the parties and made effective as to the United States, such sums as may be necessary to carry out the harvest and curing on the Pribilof Islands. Such amounts as are determined by the Secretary to exceed amounts required to carry out this section shall be transferred to the General Fund of the Treasury.

SEC. 106. [16 U.S.C. 1156] (a) Any person authorized to enforce the provisions of this Act who has reasonable cause to believe that any vessel outfitted for the harvesting of living marine resources and subject to the jurisdiction of any of the parties to the Convention is violating the provisions of article III of the Convention may, except within the areas in which another State exercises fisheries jurisdiction, board and search such vessel. Such person shall carry a special certificate of identification issued by the Secretary or Secretary of the department in which the Coast Guard is operating which shall be in English, Japanese, and Russian and which shall be exhibited to the master of the vessel upon request.

(b) If, after boarding and searching such vessel, such person continues to have reasonable cause to believe that such vessel, or any person onboard, is violating said article, he may seize such vessel or arrest such person, or both. The Secretary of State shall, as soon as practicable, notify the party having jurisdiction over the vessel or person of such seizure or arrest.

The Secretary or the Secretary of the department in which the Coast Guard is operating, upon request of the Secretary of State, shall deliver the seized vessel or arrested person, or both, as promptly as practicable to the authorized officials of said party: *Provided*, That whenever said party cannot immediately accept such delivery, the Secretary or the Secretary of the department in which the Coast Guard is operating may, upon the request of the Secretary of State, keep the vessel or person in custody within the United States.

(c) At the request of said party, the Secretary or the Secretary of the department in which the Coast Guard is operating, shall direct the person authorized to enforce the provisions of this Act to attend the trial as a witness in any case arising under said article or give testimony by deposition, and shall produce such records and files or copies thereof as may be necessary to establish the offense.

SEC. 107. [16 U.S.C. 1157] The President shall appoint to the Commission a United States Commissioner who shall serve at the pleasure of the President. The President may appoint one Native from each of the two inhabited Pribilof Islands to serve as Advisors to the Commissioner and as liaisons between the Commissioner and the Natives of the Pribilof Islands. The President may also appoint other interested parties as Advisors to the Commissioner. Such Advisors shall serve at the pleasure of the President. The President may also appoint a Deputy United States Commissioner who shall serve at the pleasure of the President. The Deputy Commissioner shall be the principal adviser of the Commissioner, and shall perform the duties of the Commissioner in the case of his death, resignation, absence, or illness. The Commissioner, the Deputy Commissioner, and the Advisors shall receive no compensation for their services. The Commissioners may be paid travel¹ expenses and per diem in lieu of subsistence at the rates authorized by section 5 of the Administrative Expense Act of 1946 when engaged in the performance of their duties.

SEC. 108. [16 U.S.C. 1158] The Secretary of State, with the concurrence of the Secretary, is authorized to accept or reject, on

¹ So in law. Probably should be "travel".

behalf of the United States, recommendations made by the Commission pursuant to article V of the Convention.

SEC. 109. [16 U.S.C. 1159] The head of any Federal agency is authorized to consult with and provide technical assistance to the Secretary or the Commission whenever such assistance is needed and reasonably can be furnished in carrying out the provisions of this title. Any Federal agency furnishing assistance hereunder may expend its own funds for such purposes, with or without reimbursement.

TITLE II—ADMINISTRATION OF THE PRIBILOF ISLANDS

SEC. 201. [16 U.S.C. 1161] The Secretary shall administer the fur seal rookeries and other Federal real and personal property on the Pribilof Islands, with the exception of lands purchased by the U.S. Fish and Wildlife Service under section 1417 of the Alaska National Interest Lands Conservation Act (Public Law 96-487) or acquired or purchased by any other authority after enactment of the Fur Seal Act Amendments of 1983 and, in consultation with the Secretary of the Interior, shall ensure that activities on such property are consistent with the purposes of conserving, managing, and protecting the North Pacific fur seals and other wildlife and for other purposes consistent with that primary purpose.

SEC. 202. [16 U.S.C. 1162] In carrying out the provisions of this title, the Secretary is authorized—

(1) to operate, both real and personal, and repair such Government-owned property, both real and personal, and other facilities held by the Secretary on the Pribilof Islands as may be necessary; and

(2) to provide the employees of the Department of Commerce and other Federal agencies and their dependents, at reasonable rates to be determined by the Secretary, with such facilities, services, and equipment as he deems necessary, including, but not limited to, food, fuel, shelter, and transportation.

SEC. 203. [16 U.S.C. 1163] The State of Alaska will be responsible for meeting the educational needs of the citizens of the Pribilof Islands.

SEC. 204. [16 U.S.C. 1164] The Secretary of Health and Human Services shall provide medical and dental care to the Natives of the Pribilof Islands with or without reimbursement, as provided by other law. He is authorized to provide such care to Federal employees and their dependents and tourists and other persons in the Pribilof Islands at reasonable rates to be determined by him. He may purchase, lease, construct, operate, and maintain such facilities, supplies, and equipment as he deems necessary to carry out the provisions of this section; and the costs of such items, including medical and dental care, shall be charged to the budget of the Secretary of Health and Human Services. Nothing in this Act shall be construed as superseding or limiting the authority and responsibility of the Secretary of Health and Human Services under the Act of August 5, 1954, as amended, or any other law with respect to medical and dental care of natives or other persons in the Pribilof Islands.

SEC. 205.¹ [16 U.S.C. 1165] (a) Any provision of law relating to the transfer and disposal of Federal property to the contrary notwithstanding, the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, is authorized to bargain, grant, sell or otherwise convey, on such terms as he deems to be in the best interests of the United States and in furtherance of the purposes of this Act, any and all right, title, and interest of the United States in and to the property, both real and personal, held by the Secretary on the Pribilof Islands: *Provided*, That such property is specified in a document entitled "Transfer of Property on the Pribilof Islands: Descriptions, Terms and Conditions," which is submitted to the Congress on or before October 31, 1983.

(b) The property transfer document described in subsection (a) shall include, but need not be limited to—

- (1) a description of each conveyance;
- (2) the terms to be imposed on each conveyance;
- (3) designation of the recipient of each conveyance;
- (4) a statement noting acceptance of each conveyance, including the terms, if any, under which it is accepted; and
- (5) an identification of all Federal property to be retained by the Federal Government on the Pribilof Islands to meet its responsibilities as described in this Act and under the Convention.

(c) Not later than 3 months after the date of the enactment of the Pribilof Islands Transition Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report that includes—

- (1) a description of all property specified in the document referred to in subsection (a) that has been conveyed under that subsection;
- (2) a description of all Federal property specified in the document referred to in subsection (a) that is going to be conveyed under that subsection; and
- (3) an identification of all Federal property on the Pribilof Islands that will be retained by the Federal Government to meet its responsibilities under this Act, the Convention, and any other applicable law.

(d) A Memorandum of Understanding shall be entered into by the Secretary, a representative of the local governmental authority on each Island, the trustee or trustees, and the appropriate officer of the State of Alaska setting forth the respective responsibilities of the Federal Government, the Trust, and the State regarding—

¹Section 144(e)(5)(C) of the Miscellaneous Appropriations Act, 2001 (114 Stat. 2763A–247) provides as follows:

(C) Effective on the date on which the Secretary of Commerce makes the certification described in subparagraph (b)(2), the following provisions are repealed:

- (i) Section 205 of the Fur Seal Act of 1966 (16 U.S.C. 1165).
- (ii) Section 3 of Public Law 104–91 (16 U.S.C. 1165 note).

The reference to "subparagraph (b)(2)" probably was intended to be to "subparagraph (B)(ii)". Compare to section 105(c) of Public Law 106–562 (114 Stat. 2798).

(1) application of Federal retirement benefits, severance pay, and insurance benefits with respect to Natives of the Pribilof Islands;

(2) funding to be allocated by the State of Alaska for the construction of boat harbors on St. Paul and St. George Islands;

(3) assumption of the State of Alaska of traditional State responsibilities for facilities and services on such islands in accordance with applicable laws and regulations;

(4) preservation of wildlife resources within the Secretary's jurisdiction;

(5) continued activities relating to the implementation of the Convention;

(6) oversight of the operation of the Trust, established by section 206(a) to further progress toward creation of a stable, diversified, and enduring economy not dependent on commercial fur sealing;

(7) the cooperation of government agencies, rendered through existing programs, in assisting with an orderly transition from Federal management and the creation of a private enterprise economy on the Pribilof Islands as described in this Act; and

(8) such other matters as may be necessary and appropriate for carrying out the purposes of the Act, including the assumption of responsibilities to ensure an orderly transition from Federal management of the Pribilof Islands.

The Memorandum shall be submitted to Congress on or before October 31, 1983.

(e) The grant, sale, transfer or conveyance of any real or personal property pursuant to this section shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or disposition of such real or personal property for purposes of any Federal, State, or local tax imposed on, or measured by revenue shall be the fair market value of such real or personal property at the time of receipt.

(f) In carrying out the purposes of this Act, the Secretary is authorized to enter into agreements, including but not limited to land exchange agreements with other Departments and Agencies of both the State and Federal Governments, and with third parties, notwithstanding any provision of law relating to the transfer and disposal of Federal property to the contrary; except that the authority of the Secretary of the Interior regarding exchanges involving lands in the National Wildlife Refuge System on the date of enactment of the Fur Seal Act Amendments of 1983 is not affected by this section.

SEC. 206. [16 U.S.C. 1166] (a)(1) Subject to the availability of appropriations, the Secretary shall provide financial assistance to any city government, village corporation, or tribal council of St. George, Alaska, or St. Paul, Alaska.

(2) Notwithstanding any other provision of law relating to matching funds, funds provided by the Secretary as assistance under this subsection may be used by the entity as non-Federal matching funds under any Federal program that requires such matching funds.

(3) The Secretary may not use financial assistance authorized by this Act—

- (A) to settle any debt owed to the United States;
- (B) for administrative or overhead expenses; or
- (C) for contributions sought or required from any person for costs or fees to clean up any matter that was caused or contributed to by such person on or after March 15, 2000.

(4) In providing assistance under this subsection the Secretary shall transfer any funds appropriated to carry out this section to the Secretary of the Interior, who shall obligate such funds through instruments and procedures that are equivalent to the instruments and procedures required to be used by the Bureau of Indian Affairs pursuant to title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(5) In any fiscal year for which less than all of the funds authorized under subsection (c)(1) are appropriated, such funds shall be distributed under this subsection on a pro rata basis among the entities referred to in subsection (c)(1) in the same proportions in which amounts are authorized by that subsection for grants to those entities.

(b)(1) Subject to the availability of appropriations, the Secretary shall provide assistance to the State of Alaska for designing, locating, constructing, redeveloping, permitting, or certifying solid waste management facilities on the Pribilof Islands to be operated under permits issued to the City of St. George and the City of St. Paul, Alaska, by the State of Alaska under section 46.03.100 of the Alaska Statutes.

(2) The Secretary shall transfer any appropriations received under paragraph (1) to the State of Alaska for the benefit of rural and Native villages in Alaska for obligation under section 303 of Public Law 104-182, except that subsection (b) of that section shall not apply to those funds.

(3) In order to be eligible to receive financial assistance under this subsection, not later than 180 days after the date of enactment of this paragraph, each of the Cities of St. Paul and St. George shall enter into a written agreement with the State of Alaska under which such City shall identify by its legal boundaries the tract or tracts of land that such City has selected as the site for its solid waste management facility and any supporting infrastructure.

(c) There are authorized to be appropriated to the Secretary for fiscal years 2001, 2002, 2003, 2004, and 2005—

(1) for assistance under subsection (a) a total not to exceed—

- (A) \$9,000,000, for grants to the City of St. Paul;
- (B) \$6,300,000, for grants to the Tanadgusix Corporation;
- (C) \$1,500,000, for grants to the St. Paul Tribal Council;
- (D) \$6,000,000, for grants to the City of St. George;
- (E) \$4,200,000, for grants to the St. George Tanaq Corporation; and
- (F) \$1,000,000, for grants to the St. George Tribal Council; and

(2) for assistance under subsection (b), for fiscal years 2001, 2002, 2003, 2004, and 2005 a total not to exceed—

(A) \$6,500,000 for the City of St. Paul; and

(B) \$3,500,000 for the City of St. George.

(d) None of the funds authorized by this section may be available for any activity a purpose of which is to influence legislation pending before the Congress, except that this subsection shall not prevent officers or employees of the United States or of its departments, agencies, or commissions from communicating to Members of Congress, through proper channels, requests for legislation or appropriations that they consider necessary for the efficient conduct of public business.

(e) Neither the United States nor any of its agencies, officers, or employees shall have any liability under this Act or any other law associated with or resulting from the designing, locating, contracting for, redeveloping, permitting, certifying, operating, or maintaining any solid waste management facility on the Pribilof Islands as a consequence of—

(1) having provided assistance to the State of Alaska under subsection (b); or

(2) providing funds for, or planning, constructing, or operating, any interim solid waste management facilities that may be required by the State of Alaska before permanent solid waste management facilities constructed with assistance provided under subsection (b) are complete and operational.

In addition, there are authorized to be appropriated to the Secretary \$3,200,000 for fiscal year 1989 and \$1,800,000 for fiscal year 1990 to be used for the purpose of funding the Saint Paul Island Trust, as established pursuant to subsection (a)(1) of this section, and \$3,700,000 for fiscal year 1990 to be used for the purpose of funding the Saint George Trust, as established pursuant to subsection (a)(1).

(f) Each entity which receives assistance authorized under subsection (c) shall submit an audited statement listing the expenditure of that assistance to the Committee on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Appropriations and the Committee on Commerce, Science, and Transportation of the Senate, on the last day of fiscal years 2002, 2004, and 2006.

(g) Amounts authorized under subsection (c) are intended by Congress to be provided in addition to the base funding appropriated to the National Oceanic and Atmospheric Administration in fiscal year 2000.

SEC. 207. [16 U.S.C. 1167] The Secretary is authorized to enter into agreements or contracts or leases with, or to issue permits to, any public or private agency or person for carrying out the provisions of the Convention or this Act.

SEC. 208. [16 U.S.C. 1168] (a) Service by natives of the Pribilof Islands engaged in the taking and curing of fur seal skins and other activities in connection with the administration of such islands prior to January 1, 1950, as determined by the Secretary based on records available to him, shall be considered for purposes of credit under the Civil Service Retirement Act, as amended, as civilian service performed by an employee, as defined in said Act.

(b) The annuity of any person or the annuity of the survivor of any person who shall have performed service described in subsection (a) of this section, and who, prior to November 2, 1966, died or shall have been retired on annuity payable from the civil service retirement and disability fund, shall, upon application filed by the annuitant within one year after November 2, 1966, be adjusted, effective as of the first day of the month immediately following November 2, 1966, so that the amount of the annuity shall be the same as if such subsection had been in effect at the time of such person's retirement or death.

(c) In no case shall credit for the service described in subsection (a) of this section entitle a person to the benefits of section 11(h) of the Civil Service Retirement Act.

(d) Notwithstanding any other provisions of this Act or any other law, benefits under the Civil Service Retirement Act made available by reason of the provisions of this section shall be paid from the civil service retirement and disability fund subject to reimbursement to such fund from the Operations, Research, and Facilities Account of the National Oceanic and Atmospheric Administration in the Department of Commerce, for the purpose of compensating said retirement fund for the cost, as determined by the Civil Service Commission during each fiscal year, of benefits provided by this section.

【SEC. 209. Made amendments to chapter 83 of title 5, United States Code.】

【SEC. 210. (a) Made an amendment to section 105(e) of Public Law 93-638.】

(b) **【25 U.S.C. 450i note】** Notwithstanding any other provision of Law, any Native of the Pribilof Islands employed by the Federal government¹ on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93-638), known as the Indian Self-Determination and Education Assistance Act.

SEC. 211. 【16 U.S.C. 1169】 The Secretary is authorized to prescribe such regulations as he deems necessary to carry out the provisions of this title.

SEC. 212. 【16 U.S.C. 1169a】 (a)(1)² An annuity or survivor annuity based on the service of an employee or Member who performed service described in the second paragraph (13) of subsection (b) or subsection (l)(1)(C) of section 8332 of title 5, United States Code, as added by subsections (b) and (e), respectively, of section 209 of this Act, shall, upon application to the Office of Personnel Management, be recomputed in accordance with the second paragraph (13) of subsection (b) and subsection (l), respectively, of such section 8332, regardless of whether the employee or Member retires before, on, or after the effective date of this paragraph.

(2) Any recomputation of annuity under paragraph (1) of this subsection shall apply with respect to months beginning more than

¹ So in law. Probably should be "Government".

² So in law. This section was enacted without enacting a subsection (b).

30 days after the date on which application for such recomputation is received by the Office.

SEC. 212.³ [16 U.S.C. 1169b] Notwithstanding any other law to the contrary, the Secretary of Commerce shall, to the maximum extent practicable, carry out activities under subsection (a) and fulfill other obligations under Federal and State law relating to the Pribilof Islands, through grants or other agreements with local entities and residents of the Pribilof Islands, unless specialized skills are needed for an activity, and the Secretary specifies in writing that such skills are not available through local entities and residents of the Pribilof Islands.

TITLE III—ENFORCEMENT

SEC. 301. [16 U.S.C. 1171] (a) Every vessel subject to the jurisdiction of the United States that is employed in any manner in connection with a violation of the provision of this Act, including its tackle, apparel, furniture, appurtenances, cargo, and stores shall be subject to forfeiture; and all fur seals, or parts thereof, taken or retained in violation of this Act, or the monetary value thereof, shall be forfeited.

(b) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of a vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores for violation of the customs laws, the disposition of such vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

SEC. 302. [16 U.S.C. 1172] (a) Enforcement of the provisions of this Act is the joint responsibility of the Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating. In addition, the Secretary may designate officers and employees of the States of the United States to enforce the provisions of this Act which relate to persons or vessels subject to the jurisdiction of the United States. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes; but they shall not be held and considered as employees of the United States for the purpose of any laws administered by the Office of Personnel Management.

(b) The judges of the United States district courts and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in Federal district courts, as may be required for enforcement of this Act and any regulations issued thereunder.

(c) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process

³The second section 212 resulted from the amendment made by section 144(e)(6)(A)(ii) of the Miscellaneous Appropriations Act, 2001 (114 Stat. 2763A–248).

issued by any officer or court of competent jurisdiction for the enforcement of this Act.

(d) Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any person committing in his presence or view a violation of this Act or the regulations issued thereunder;¹

(2) with a warrant or other process or without a warrant, if he has reasonable cause to believe that a vessel subject to the jurisdiction of the United States or any person onboard is in violation of any provision of this Act or the regulations issued thereunder, to search such vessel and to arrest such person.

(e) Such person so authorized may seize any vessel subject to the jurisdiction of the United States, together with its tackle, apparel, furniture, appurtenances, cargo, and stores, used or employed contrary to the provisions of this Act or the regulations issued hereunder or which it reasonably appears has been used or employed contrary to the provisions of this Act or the regulations issued hereunder.

(f) Such person so authorized may seize, whenever and wherever lawfully found, all fur seals taken or retained in violation of this Act or the regulations issued thereunder. Any fur seals so seized or forfeited to the United States pursuant to this Act shall be disposed of in accordance with the provisions of section 105 of this Act.

SEC. 303. [16 U.S.C. 1173] The Secretary is authorized to prescribe such regulations as he deems necessary and appropriate to carry out the provisions of this title.

SEC. 304. [16 U.S.C. 1174] (a) Any person who knowingly violates any provision of this Act or of any permit or regulation issued thereunder shall, upon conviction, be fined not more than \$20,000 for such violation, or imprisoned for not more than one year, or both.

(b) Any person who violates any provision of this Act or any regulation or permit issued hereunder may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Hearings held during proceedings for the assessment of civil penalties authorized by this subsection shall be conducted in accordance with section 554 of title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both,

¹ So in law. Should include "and" after the semicolon.

and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any civil penalty assessed may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action.

SEC. 305. [16 U.S.C. 1175] (a) There are authorized to be appropriated to the operations, research, and facilities account of the National Oceanic and Atmospheric Administration in the Department of Commerce, such sums as may be necessary, up to \$2,000,000, for fiscal year 1984 for the purpose of upgrading Federal property to be transferred pursuant to section 205 of this Act, \$736,000 for fiscal year 1984 for the purposes of sections 104 and 208 of this Act and such sums as may be necessary for each fiscal year thereafter for the purposes of sections 104 and 208 of this Act.

(b) The contract authority of the Secretary under this Act is effective for any fiscal year only to the extent that appropriations are available for such purposes.

The National Environmental Policy Act of 1969, as amended

(Pub. L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, as amended by Pub. L. 94-52, July 3, 1975, Pub. L. 94-83, August 9, 1975, and Pub. L. 97-258, § 4(b), Sept. 13, 1982)

An Act to establish a national policy for the environment, to provide for the establishment of a Council on Environmental Quality, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "National Environmental Policy Act of 1969."

Purpose

Sec. 2 [42 USC § 4321].

The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

CONGRESSIONAL DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101 [42 USC § 4331].

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may --

1. fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
2. assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
3. attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
4. preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity, and variety of individual choice;
5. achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
6. enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102 [42 USC § 4332].

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall --

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on --

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

- (i) the State agency or official has statewide jurisdiction and has the responsibility for such action,
- (ii) the responsible Federal official furnishes guidance and participates in such preparation,
- (iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and
- (iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103 [42 USC § 4333].

All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104 [42 USC § 4334].

Nothing in section 102 [42 USC § 4332] or 103 [42 USC § 4333] shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105 [42 USC § 4335].

The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201 [42 USC § 4341].

The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest, dryland, wetland, range, urban, suburban and rural environment; (2) current and foreseeable trends in the quality, management and utilization of such environments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202 [42 USC § 4342].

There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203 [42 USC § 4343].

(a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 1342 of Title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204 [42 USC § 4344].

It shall be the duty and function of the Council --

1. to assist and advise the President in the preparation of the Environmental Quality Report required by section 201 [42 USC § 4341] of this title;
2. to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to compile and submit to the President studies relating to such conditions and trends;
3. to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;
4. to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;
5. to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;
6. to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;
7. to report at least once each year to the President on the state and condition of the environment; and
8. to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205 [42 USC § 4345].

In exercising its powers, functions, and duties under this Act, the Council shall --

1. consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order No. 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as it deems advisable; and
2. utilize, to the fullest extent possible, the services, facilities and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206 [42 USC § 4346].

Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates [5 USC § 5313]. The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates [5 USC § 5315].

Sec. 207 [42 USC § 4346a].

The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Sec. 208 [42 USC § 4346b].

The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209 [42 USC § 4347].

There are authorized to be appropriated to carry out the provisions of this chapter not to exceed \$300,000 for fiscal year 1970, \$700,000 for fiscal year 1971, and \$1,000,000 for each fiscal year thereafter.

The Environmental Quality Improvement Act, as amended (Pub. L. No. 91- 224, Title II, April 3, 1970; Pub. L. No. 97-258, September 13, 1982; and Pub. L. No. 98-581, October 30, 1984.

42 USC § 4372.

(a) There is established in the Executive Office of the President an office to be known as the Office of Environmental Quality (hereafter in this chapter referred to as the "Office"). The Chairman of the Council on Environmental Quality established by Public Law 91-190 shall be the Director of the Office. There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) The Director is authorized to employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this chapter and Public Law 91-190, except that he may employ no more than ten specialists and other experts without regard to the provisions of Title 5, governing appointments in the competitive service, and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of Title 5.

(d) In carrying out his functions the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by --

1. providing the professional and administrative staff and support for the Council on Environmental Quality established by Public Law 91- 190;
2. assisting the Federal agencies and departments in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and those specific major projects designated by the President which do not require individual project authorization by Congress, which affect environmental quality;
3. reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;
4. promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;
5. assisting in coordinating among the Federal departments and agencies those programs and activities which affect, protect, and improve environmental quality;
6. assisting the Federal departments and agencies in the development and interrelationship of environmental quality criteria and standards established throughout the Federal Government;
7. collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) The Director is authorized to contract with public or private agencies, institutions, and organizations and with individuals without regard to section 3324(a) and (b) of Title 31 and section 5 of Title 41 in carrying out his functions.

42 USC § 4373. Each Environmental Quality Report required by Public Law 91-190 shall, upon transmittal to Congress, be referred to each standing committee having jurisdiction over any part of the subject matter of the Report.

42 USC § 4374. There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91- 190:

- (a) \$2,126,000 for the fiscal year ending September 30, 1979.
- (b) \$3,000,000 for the fiscal years ending September 30, 1980, and September 30, 1981.
- (c) \$44,000 for the fiscal years ending September 30, 1982, 1983, and 1984.
- (d) \$480,000 for each of the fiscal years ending September 30, 1985 and 1986.

42 USC § 4375.

(a) There is established an Office of Environmental Quality Management Fund (hereinafter referred to as the "Fund") to receive advance payments from other agencies or accounts that may be used solely to finance --

1. study contracts that are jointly sponsored by the Office and one or more other Federal agencies; and
2. Federal interagency environmental projects (including task forces) in which the Office participates.

(b) Any study contract or project that is to be financed under subsection (a) of this section may be initiated only with the approval of the Director.

(c) The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

Privacy Act System of Records, COMMERCE/NOAA #12

System name: Marine Mammals, Endangered and Threatened Species, Permits and Exemptions Applicants-- COMMERCE/NOAA-12.

System location:

Office of Marine Mammal and Endangered Species, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235.

Duplicate portions of the system may be located in the Regional Offices of the National Marine Fisheries Service at: Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930.

Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

300 South Ferry Street, Terminal Island, California 90731.

Lake Union Building, 1700 Westlake Avenue North, Seattle, Washington 98109.

PO Box 1668, Juneau, Alaska 99801.

Categories of individuals covered by the system:

Applicants for permits to take, import, transport or sell in interstate or foreign commerce endangered species or marine mammals either for scientific research or public display purposes; for enhancement of propagation or enhancement of survival. Applicants for exemptions from the provisions of the Marine Mammal Protection Act of 1972, on the basis of undue economic hardship. Applicants for permits to engage in activities involving threatened species.

Categories of records in the system:

Name and address; professional or business affiliation; educational and professional background; other qualifications of the individuals; the activities conducted by an individual as authorized by exemption or by permit; and economic and financial information indicating the degree of anticipated economic hardship.

Authority for maintenance of the system:

Endangered Species Act of 1973; 16 U.S.C. 1531-1543 10(a), 10(b), 11(f); Marine Mammal Protection Act of 1972; 16 U.S.C. 1361-1407, and regulations (50 CFR 216.31) promulgated thereunder.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See routine use paragraphs 1-5 and 9-13 of Prefatory Statement.

Information from the applications is published in the Federal Register and made available to the public to comply with the statutes under which the application is made.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system: Storage:

Both manual and machine-readable, and computer output records in file folders.

Retrievability:

Filed by file number and cross-referenced alphabetically by applicant names and permit or exemption number. Safeguards:

Records are located in cabinets with full public access upon request.

Retention and disposal:

Records are maintained indefinitely.

System manager(s) and address: Director, Office of Marine Mammals and Endangered Species, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, DC 20235

Notification procedure:

Information may be obtained from the Assistant Administrator for Management and Budget, National Oceanic and Atmospheric Administration, 6010 Executive Boulevard, Rockville, Maryland 20852.

Requester should provide name and address pursuant to the inquiry provisions of the Department's rules which appear in 15 CFR part 4b.

Record access procedures:

Requests from individuals should be addressed to: Same address as stated in the notification procedure section above.

Contesting record procedures:

The rules for access, for contesting contents and appealing initial determination by the individuals concerned appear in 15 CFR part 4b. Use above address.

Record source categories:

Subject individual applicants; public comments on an application; reviews by NMFS Offices and, in the case of marine mammals, the Marine Mammal Commission; reports from Federal agents and observers on activities conducted under permit authority; and those authorized by the individual to provide the information.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: March 31, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9-7688 Filed 4-3-09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Basic Requirements for Special Exemption Permits and Authorizations To Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection, the Fur Seal, and the Endangered Species Acts

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before June 5, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy Sloan, (301) 713-2289 or Amy.Sloan@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; MMPA), Fur Seal Act (16 U.S.C. 1151 *et seq.*; FSA), and Endangered Species Act (16 U.S.C. 1531 *et seq.*; ESA) prohibit certain actions affecting marine mammals and endangered and threatened species, with exceptions. Permits can be

obtained for scientific research and enhancing the survival or recovery of a species or stock of marine mammals or threatened or endangered species; commercial and educational photography of marine mammals; and import and capture of marine mammals for public display. Letters of Confirmation can be obtained under the General Authorization (GA) for scientific research that involves minimal disturbance to marine mammals. The applicants desiring a permit or authorization must provide certain information for the National Marine Fisheries Service (NMFS) to determine whether a proposed activity is consistent with the purposes, policies, and requirements of the applicable laws, and that the activity is in the best interest of the protected species and the public. Permit holders and authorized researchers must report on activities conducted to ensure compliance with permit conditions and protection of the animals. Holders of captive marine mammals must report changes to their animal inventory.

This information collection applies to protected species for which NMFS is responsible, including the marine mammal species of cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions) and threatened and endangered species including sea turtles (in water), white abalone, black abalone, smalltooth sawfish, shortnose sturgeon, and elkhorn and staghorn corals. The regulations implementing permit, authorization, and inventory requirements under the MMPA and FSA are at 50 CFR part 216; the regulations for permit requirements under the ESA are at 50 CFR part 222.

Respondents will be researchers, photographers, and other members of the public seeking exceptions to prohibited activities on marine mammals and endangered and threatened species through permits or authorizations for purposes described above; and holders of marine mammals in captivity.

II. Method of Collection

Permit and authorization application materials and reports are available in paper and electronic versions, and are written to respond to a required format. Inventory materials and reports are paper forms. Methods of submission include mail, facsimile transmission, and electronic submission via e-mail or through an on-line application system known as Authorizations and Permits for Protected Species (APPS).

III. Data

OMB Control Number: 0648-0084.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; not-for-profit institutions; business or other for-profit organizations; Federal Government; and State, Local, or Tribal Government.

Estimated Number of Respondents: 514.

Estimated Time per Response: 50 hours for an application for a scientific research or enhancement permit; 30 hours for an application for a public display permit; 10 hours for an application for a photography permit or GA Letter of Confirmation; 35 hours for a major amendment or modification to a permit; 3 hours for a minor amendment or modification to a permit or for a change to a GA Letter of Confirmation; 12 hours for a scientific research or enhancement permit report; 8 hours for a GA Letter of Confirmation report; 2 hours for a public display or photography permit report; request to retain or transfer a rehabilitated marine mammal, or a marine mammal inventory (1 hour for a transport notification; 30 minutes each for a data sheet and a person/holder/facility sheet); and 2 hours for recordkeeping.

Estimated Total Annual Burden Hours: 7,716.

Estimated Total Annual Cost to Public: \$2,000.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 1, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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