

**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/>

TABLE OF CONTENTS

INTRODUCTION.....	3
Activities/Species for Which These Instructions Apply.....	4
Guidelines for Using These Instructions.....	5
INSTRUCTIONS.....	7
I. Title of the Application.....	7
II. Date of the Application.....	7
III. Applicant.....	7
IV. Description of the Marine Mammals and the Proposed Activity.....	7
V. Export Requirements.....	12
VI. General Requirements for Public Display.....	13
VII. Previous Permits.....	13
VIII. Certification and Signature.....	14
Additional Information.....	15
APPENDIX I – GLOSSARY OF TERMS.....	16
APPENDIX II - RELEVANT STATUTES.....	18
APPENDIX III – SUPPLEMENTAL INFORMATION.....	20

**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 be enforced; and (3) the government will provide comity to requests made by NMFS (e.g.,

1 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.

2 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.*

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) 427-8401.

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.

VIII. Certification and Signature

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.

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 - 1conveyance 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*

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.

attempting to feed a marine mammal in the wild.

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.

The Endangered Species Act of 1973 (ESA) prohibits, with certain exceptions, the taking³ of

1 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.

2 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.*

3 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.*

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.nmfs.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) 427-8405 for further information.

U.S. Fish and Wildlife Service Wildlife Inspectors

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

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.