

**Attachment 2: 0648-0084 Paperwork Reduction Act *Federal Register* Notice (84 FR 50409)
Comments and Responses on the National Inventory of Marine Mammals (NIMM) and
Marine Mammal Protection Act Public Display Permit Application Instructions**

We received the following comments from three commenters: The Alliance of Marine Mammal Parks and Aquariums; the Animal Welfare Institute on behalf of additional non-governmental organizations; and the Marine Mammal Commission. Below, we summarize their comments and provide responses.

Commenter: Alliance of Marine Mammal Parks and Aquariums (AMMPA; includes zoos and aquariums required to provide information to NIMM and that may apply for public display permits)

AMMPA Comment 1: The AMMPA submitted comments in response to the February 2019 *Federal Register* notice (84 FR 4443)¹ on the administration of NIMM. As they stated in those comments, the AMMPA maintains that the information contained in the inventory must not exceed the scope of what is required under the Marine Mammal Protection Act (MMPA) and specifically Section 104(c)(10) of the MMPA, which requires Owners and Facilities to report only the following inventory data for each marine mammal:

- (A) Animal name or other identification,
- (B) Sex,
- (C) Estimated or actual birth date,
- (D) Date animal enters and leaves a collection,
- (E) Source of the animal,
- (F) Name of the recipient,
- (G) Whether the animal is from a stranding, and
- (H) Date and cause of death (when determined).

The AMMPA commented that information on the proposed Marine Mammal Data Sheet (MMDS) beyond these eight limited points is not necessary for the proper performance of the functions of the agency.

NMFS Response to AMMPA Comment 1: We agree with the AMMPA comments and in response, have condensed the MMDS to only include those fields that are relevant to reporting captive births, deaths, or releases/escapes (i.e., for the intended use of the blank form). For example, data associated with captures or strandings have been removed from the blank data sheet as these data are entered into NIMM by NMFS as a result of permit conditions (e.g., for captures or imports and necessary for the proper performance of the functions of the agency) or NMFS' procedural directive for placement of non-releasable

¹ 84 FR 4443 published February 15, 2019. In response to a request by the AMMPA, NMFS extended the public comment period (84 FR 15593) on proposed policies and procedures for NIMM through July 31, 2019.

marine mammals (i.e., reporting whether the animal is from a stranding, as required by the MMPA). The removed data includes scientific name, fields associated with capture or stranded origin, other dates (captivity, custody, and facility dates, as they are identical to the birth date), and city/state/zip of facility. These data are not necessary or are duplicative of data already being collected. For the fields associated with the MMDS that we propose in response to these comments, Table 1 below provides an explanation for the legal authority or purpose of the field necessary for the proper performance of the functions of the agency.

Table 1. Proposed MMDS Fields and Legal Authority or Necessary Purpose

MMDS Field	Legal Authority or Necessary Purpose
NOAA Identification Number	Necessary for the proper performance of the functions of the agency. The NOAA ID is generated by NIMM when an animal is entered into the database and links individual activity records of an animal. This ID is used to cross-check data and confirm animal identities in both hard copy and electronic files.
Animal Identification Number	MMPA Section 104(c)(10)(A) – name or other ID
Animal Name	MMPA Section 104(c)(10)(A) – name or other ID
Common Name	Necessary for the proper performance of the functions of the agency and administration of NIMM to identify the kind of marine mammal of each individual in the database
Sex	MMPA Section 104(c)(10)(B) - sex
Birth Date	MMPA Section 104(c)(10)(C) – birth date
Birth Date Certainty	MMPA Section 104(c)(10)(C) – identify birth date as estimated or actual
Permit No.	As applicable, for a captive birth authorized under a permit; MMPA 104(c)(1) – any person authorized take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock must report on all activities carried out pursuant to that authority
Purpose	Necessary for the proper performance of the of the functions of the agency to identify the legal authority under MMPA Section 104 for which a marine mammal is being held (i.e., public display, research, or enhancement, or Department of Defense)
Release/Escape Date	MMPA Section 104(c)(10)(D) – date of acquisition/disposition
Owner	MMPA Section 104(c)(10)(E) and (F) – from whom a marine mammal was acquired and to whom it is transferred. Necessary for the proper performance of the functions of the agency to identify and correspond with the Owner of a marine mammal.
Facility	MMPA Section 104(c)(10)(E) and (F) – from whom a marine mammal was acquired and to whom it is transferred. Necessary for the proper performance of the functions of the agency to identify the facility where the marine mammal is located or transported.

MMDS Field	Legal Authority or Necessary Purpose
Death Date	MMPA Section 104(c)(10)(H) – date of death
Cause of Death	MMPA Section 104(c)(10)(H) – cause of death, when determined
Permit No.	As applicable, for a release of a captive marine mammal under a permit; MMPA Section 104(c)(1) – any person authorized take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock must report on all activities carried out pursuant to that authority
Unauthorized release/escape (checkbox)	MMPA Section 104(c)(10)(D) – disposition (releases and escapes)
Geographic Location	Optional field; general description of the geographic location associated with the release/escape of an animal; may be necessary for the proper performance of the functions of the agency, e.g., if called upon to rescue the animal and to alert NOAA responders; may be necessary for the protection and welfare of the individual animal and wild populations
Latitude and Longitude Degrees	Optional field; precise geographic location associated with the release/escape of an animal; may be necessary for the proper performance of the functions of the agency if called upon to rescue the animal and to alert NOAA responders; may be necessary for the protection and welfare of the individual and wild marine mammals
Tag number or Description of other identifying markings	Optional field; tag number or description of an animal that has been released/escaped; may be necessary for the proper performance of the functions of the agency, e.g., if called upon to rescue the animal and to alert NOAA responders; may be necessary for the protection and welfare of the individual and wild marine mammals

The MMDS is primarily used to report captive births to NMFS; NMFS then enters the data into NIMM and subsequently generates a complete MMDS for facility to use for reporting deaths, escapes/releases, and to verify transfers and/or transports. The blank MMDS may also be used to report deaths or releases/escapes.

Once NIMM is available for direct use by Owners and Facilities, submission of an MMDS will not be required for those who choose to enter their inventory data into NIMM.

AMMPA Comment 2: The AMMPA commented that it would be helpful for NOAA to clarify that Owners and Facilities only need to update NIMM on an annual basis rather than every time there is a change in a facility's collection. AMMPA recognizes that the MMPA establishes specific time parameters for reporting certain facts (for example, the Secretary must be notified of a birth within 30 days after the date of birth and no later than 15 days before the sale, purchase or transport of a marine mammal). However, the MMPA does not require that the inventory be continuously updated. Clarifying that NIMM need only be updated on an annual basis would help alleviate the reporting burden on facilities that maintain marine mammals.

NMFS Response to AMMPA Comment 2: As the AMMPA states, the MMPA requires a 15-day notification prior to the sale, purchase, or transport of any marine mammal (Section 104(c)(2)(E) and Section 104(c)(8)(B)(i)(II)). We request that marine mammal Owners and Facilities verify transfers and transports within 30 days of the actual transfer and/or transport. This practice allows marine mammal Owners and Facilities to transfer and/or transport marine mammals within 60 days from the end of the 15-day notification time period, providing flexibility to schedule and adjust plans without providing new notifications. NMFS could not maintain an accurate inventory if we did not receive verification that a transport or transfer actually occurred, because in some cases, planned transfer/transport dates change or transfers/transports are not completed. In addition, the MMPA requires births to be reported within 30 days of the date of the birth (Section 104(c)(8)(B)(i)(I)). These specific requirements mean the inventory already needs to be update more frequently than annually in many cases. Likewise, in many cases a particular Owner or Facility will not have any changes to report during the previous year, and therefore there is no need for NMFS to request an annual report.

AMMPA Comment 3: The AMMPA stated that it is not clear how the MMDS will be used in conjunction with the proposal to make NIMM accessible online. They asked if Owners and Facilities who choose to submit marine mammal inventory information via email, fax, or mail (as is currently done) would be working off a form that is different from the form or format used by those who choose to access NIMM. They believe that would create a paperwork burden and confusion for Facilities and Owners.

NMFS Response to AMMPA Comment 3: Inventory data submitted on an MMDS via email, fax, or hard copy will be entered into NIMM by NMFS. As mentioned above, the blank MMDS is intended for use in reporting births, deaths, and escapes/releases. Once we make NIMM accessible to marine mammal Owners and Facilities, they will have the option to add birth, death, and release/escape information directly into NIMM in lieu of filling out and submitting a MMDS form. The information in NIMM for this reporting is similar to what is on the revised MMDS with the exception of three additional dates (activity date [the date the animal was born, captured, or was stranded], custody/ownership date [the date they assumed legal custody of the animal], and facility

date [the date the animal arrived/was born at the facility]). While these dates are identical for captive born animals, these additional fields are necessary for the proper performance of the functions of the agency to identify the complete and accurate legal history of the animal's captivity origins (i.e., captured and stranded). For example, the estimated birth date of a wild captured animal is not the same as the date the animal was captured (activity date), the date the Owner took custody/ownership of the animal (custody date), or the date the animal arrived at the Facility (facility date). These are all actions governed by the MMPA.

Owners and Facilities will also have the ability to submit a 15 day notification of transfers and transfers in NIMM, which is included on a separate form (addressed further below). We propose to also allow Owners and Facilities to review and correct existing data in NIMM; therefore, additional fields will be viewable in NIMM. For example, captures and imports are reported in accordance with the conditions outlined in the associated NMFS permit. NMFS includes such permit information as (e.g., capture date, custody date, facility date, permit number, the collector, geographic location, and latitude/longitude degrees) in the NIMM database, which is necessary for the proper performance of the functions of the agency in order to link permit records with permitted animals' inventory records and to identify the source of the animal, including location of the take from the wild in accordance with Section 104(c)(10)(E) of the MMPA.

Acquisitions of non-releasable stranded animals are considered transfers and/or transports and are verified by submitting an updated MMDS with dates of transfer and/or transport and either an animal name or other identification. NMFS, with the legal authority over stranded animals, enters certain stranding information (i.e., stranding date, custody date, facility date, NMFS determination date [date the animal was deemed non-releasable], permit number, the collector, geographic location, and latitude/longitude degrees) in the NIMM database, which is necessary for the proper performance of the functions of the agency. Once NIMM is made available to Owners and Facilities, they will be able to verify the transfer and/or transport of non-releasable stranded marine mammals directly in NIMM.

NIMM contains different modules or tabs associated with adding new animals to the inventory and reporting a final disposition (death or release/escape). Regarding the option of adding new animals, all of the fields associated with Section I (Reporting a Captive Birth) are reflected in NIMM (excluding the fields being deleted from the MMDS as described above in response to AMMPA comment 1). Once available, when adding a new animal into NIMM, Owners and Facilities will also enter three additional dates (as described above). In addition, NIMM provides for an optional text box for user comments and/or notes.

Also, once available, those marine mammal Owners and Facilities that choose not to report directly to NIMM online should already have an MMDS for each of their animals, because we provide an updated MMDS to the Owners and Facilities with each reported inventory change. The existing MMDS can be used to report deaths or releases/escapes. Alternatively, marine mammal Owners and Facilities may use Section III of the blank MMDS to report dispositions (e.g., deaths, releases/escapes) and those fields are identical to those found in NIMM. A notation has been included on the blank MMDS encouraging Owners and Facilities to use a system-generated MMDS for their specific marine mammal when report dispositions, which will be provided by NMFS upon request.

AMMPA Comment 4: Section 104(c)(10) of the MMPA clearly requires Owners and Facilities to report only the animal name or other identification for each marine mammal. The proposed MMDS would require Owners and Facilities to report at least two identifiers, with the option of including a third: a NOAA Identification Number, an Animal Identification Number (assigned by the facility), and/or an Animal Name (assigned by the facility). The AMMPA stated that this requirement exceeds the plain language requirements of the MMPA and that the MMDS should be modified to comply with the MMPA and require only the animal name or other identification.

NMFS Response to AMMPA Comment 4: In response to this comment, we propose to remove the “and/or” as related to the animal name or animal identification number and replacing it with “or” and only one field to provide either an ID or a name. We note that some Owners and Facilities use either animal names or animal identification numbers, while some have chosen to use both in their inventory records.

The NOAA Identification Number is necessary for the proper performance of the functions of the agency as it relates to operation of and use of NIMM. Specifically, it provides a unifying link of an individual animal’s data as an animal moves between marine mammal Owners and Facilities. Section 104(c)(10)(A) of the MMPA requires a “name of the marine mammal or other identification” to be reported to NMFS “by a person holding a marine mammal.” The NOAA Identification Number is generated upon addition of a new animal into NIMM by NMFS, not the Owner or Facility. All required data is needed for NIMM to accept the data entry in order to produce the NOAA Identification Number, and, therefore, the NOAA Identification Number cannot be used as the Animal Identification Number in the system. In addition, the use of the NOAA Identification Number in combination with either an Owner or Facility assigned name or identification allows for cross-checking of reporting to ensure that updates are made to the correct animal’s record.

To simplify inventory reporting, we are considering removing the option for facility assigned animal identification numbers and animal names. This change would require reprogramming of NIMM which needs to be fully evaluated before proceeding. Once

NIMM is made available for data entry by Owners and Facilities, we will seek their input regarding maintaining both Owner and Facility identifications (animal name or identification number).

AMMPA Comment 5: The AMMPA stated that the language in the Owner/Facility section of the MMDS is confusing and redundant/duplicative, including the following fields: “Custody Date,” “Facility Date,” “Captivity Date,” “City/State/Zip of Facility (include Country for foreign facilities)” and “Animal Identification No. (assigned by facility) and/or Animal Name (assigned by facility).” The AMMPA requested clarifications of these definitions and which facility has the responsibility to report on animals that are part of a breeding loan. In the experience of AMMPA members, the lines are often blurry which causes confusion.

NMFS Response to AMMPA Comment 5: As stated above, we have revised the blank MMDS (used for reporting births, deaths, and releases). This form would be used by Owners and Facilities that choose to report inventory changes via email, fax, or mail; and not direct entry into NIMM once that option is available. We have defined all of the MMDS fields and added them to the MMDS. Currently, we allow both Owners and Facilities to submit inventory data. We determined this to be necessary in order to allow flexibility for either the Owner or Facility to report inventory changes.

In response to the AMMPA’s comments to clarify which entity (Owner or Facility) is responsible for reporting inventory data, we are providing additional guidance on the NIMM inventory forms. Ideally, Owners would be responsible for reporting all births, deaths, and notifications and verifications of transfer and/or transport regardless of the facility where the subject animal is located; however, in some cases, inventory data may be submitted by Facilities. Once NIMM is made available to the Owners and Facilities, we will seek comment on reporting responsibilities and evaluate if this is the most efficient and least burdensome process to the users.

MMDS generated for specific animals by NIMM will have the majority of data already auto-filled. These animal-specific MMDS may be used to report dispositions (death, release, escapes) or to verify transfers and/or transports by those facilities that are not using NIMM directly. Owners and Facilities will only need to insert such data as is required to report the disposition or to confirm that a transfer and/or transport has taken place.

AMMPA Comment: The AMMPA appreciates the efforts to improve readability and make the public display application instructions more user-friendly. For the qualifications form, the AMMPA recommends we remove certain requirements that mirror qualifications for scientific researchers including proposed item #5 “Relevant peer-reviewed publication history” and item

#6, “Relevant reports and presentations,” both of which may not be relevant to assessing a trainer’s ability to facilitate the transport for an import permit application for public display.

NMFS Response: In some cases, animal care professionals who oversee transports may have scientific or non-scientific publications or presentations that qualify and support their experience to carry out the proposed activities. The Qualification Form for Public Display (QF) is also meant to encompass veterinarians that may be part of a transport team, and they may also have relevant publications or presentations. Rather than delete these fields, we propose to update the QF and merge items #5 and #6 into a single, *optional* field for personnel to provide relevant reports, publications, and presentations (i.e., it will not be required and is not specific to peer-reviewed scientific literature).

AMMPA Comments: As part of the previous round of comments on the administration of NIMM, AMMPA raised the following three points about information that is collected for transfers/transports of marine mammals:

1) The AMMPA agreed that using NIMM as a mechanism for Owners and Facilities to notify NMFS of pending transfers and transports is an effective and efficient means of complying with the 15-day notification requirement under §§ 104(c)(2)(E) and 104(c)(8)(B)(i)(II) of the MMPA. The AMMPA indicated it is not clear how the Marine Mammal Transfer/Transport Notification (MMTTN) form proposed with this PRA *Federal Register* notice will be used in conjunction with NIMM. The AMMPA asked how the process using NIMM and this proposed form will differ from what is currently done.

NMFS Response: Once NIMM is launched, marine mammal Owners and Facilities will have the option of entering notifications directly into NIMM or submitting an MMTTN via email, fax, or mail that we will enter into NIMM. The fields associated with entering a transfer and/or transport notification into NIMM are identical to the fields found on the MMTTN except for the need for a “certification” on the MMTTN, which is necessary to identify who is submitting the notification for entry into NIMM. Once available, NIMM data entry will be access-controlled and limited to a Responsible Party and a Primary Contact for each institution to protect access to their information. Therefore, only those representatives identified by an institution can enter a notification; the identity of the submitter is retained by the system.

Owners and Facilities that choose to use the MMTTN to provide notifications of transfers and/or transports will receive an email confirmation that their data have been entered into NIMM by NMFS. This email will include an MMDS with specific fields highlighted for the Owner and/or Facility to update and return to our Office. These fields include the date of transfer and/or transport and identification fields (either the animal name or animal ID must be reported). Upon receipt of the updated MMDS, we will enter the data

into NIMM and send a new MMDS reflecting the completed transfer and/or transport on the sheet.

Owners and Facilities that choose to use NIMM (once available) to provide a 15-day notification of a transfer and/or transport will receive an automatic email confirmation that their data has been received in NIMM. This email will be sent to all Owners and Facilities affected by the transfer and/or transport. Owners and Facilities will also be able to verify transfers and/or transports directly in NIMM, once available.

2) The AMMPA again urged NMFS to ensure that Owners and Facilities have the ability to enter more than one transfer/transport notification for a particular animal at a time to better allow facilities to anticipate the animal's needs and to develop a comprehensive plan designed to meet those needs, rather than relying on emergency notifications, which can be affected by weekends, holidays and time zones.

NMFS Response: We appear to have overlooked this comment made by the AMMPA on the previous NIMM *Federal Register* notice. In our experience over the past 20 years, there are very few instances where an Owner or Facility may need the option of providing a notification to transport a marine mammal to more than one facility. Notifications that take into account multiple destinations are the exceptions to the process. NIMM has been designed and programmed to allow for a single transfer, transport, or transfer/transport to be entered into the system. This ensures that pending notifications are either verified or cancelled prior to a new notification being entered into the system and prevents pending notifications from “piling up” in an animal's record. It also ensures that an animal's transfer and transport history is maintained in chronological order without data gaps (e.g., should a notification fail to be verified).

While multiple transfers and/or transports cannot be entered directly into NIMM, we can accommodate multiple transfers and/or transports via email, fax, or mail when necessary. In many cases, these notifications could be received 15-days in advance and would not need to be considered as emergency waivers. We have updated the Marine Mammal Transfer/Transport Notification form (MMTTN) with additional guidance for how to indicate multiple destinations for an animal in a notification when necessary.

Emergency waivers are considered those actions which do not fall within the parameters of NIMM or the time frame of the 15-day notification. For example, an Owner cannot enter a notification in NIMM for an animal to receive emergency diagnostic tests at a partnering public hospital (public hospitals are not listed in NIMM as a receiving facilities); or, an Owner cannot provide a notification of the need to move animals 15 days in advance of an impending hurricane. Emergency waivers are for unpredictable

and unplanned circumstances, which is not the case if an Owner and/or Facility is making plans in advance to move an animal but is unsure of the final destination.

3) The AMMPA stressed that pending transfers and transports must not be made available to the public (whether as part of NIMM or through a FOIA request) until after they occur and have been confirmed to protect the safety of animals and staff. The AMMPA is concerned by the fact that the PRA notice does not make the agency's intent clear and urges NOAA to do so.

NMFS Response: In the previous NIMM notice (84 FR 4443), we indicated we would not make pending transfers and transports publicly available in NIMM online but that such information is subject to FOIA (which, as explained below, includes any relevant exemptions). We are not proposing public disclosure of any information via NIMM at this time; we plan to publish a separate *Federal Register* notice regarding public access to NIMM.

AMMPA Comment: The AMMPA noted that page 20 of the proposed Instructions for a Marine Mammal Public Display Permit referenced “researchers” and recommended that given these are instructions for a public display permit, the language should be modified.

NMFS Response: This was an error and we appreciate the comment. We have updated the public display permit application instructions to remove reference to researchers in the personnel qualifications section on page 20.

AMMPA Comment: The changes to the NIMM Institutional Contacts form appear to be relatively minor; however, the recurring typo in the title should be corrected – “INSTITUTIONAL” rather than “INSTIUTIONAL.”

NMFS Response: This was an error and we appreciate the comment. We have made this correction.

AMMPA Comment: The AMMPA commented on the previous NIMM notice and this PRA notice that certain inventory information provided to NOAA by zoos and aquariums is confidential and must be protected from disclosure under FOIA Exemption 4, 5 U.S.C. § 552(b) (4), citing a recent Supreme Court ruling, *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019), which clarified the meaning of the word “confidential” and removed the requirement that “substantial competitive harm” must be demonstrated. The AMMPA recommended that NOAA incorporate into any new procedures, policies and paperwork an assurance that confidential information will be protected.

The AMMPA finds the simple FOIA disclosure included in most of the proposed forms – “All documentation required for this information collection is subject to the Freedom of Information

Act (FOIA)” – to be inadequate. They also questioned why we removed the statement that personal or sensitive information that is subject to the Privacy Act would be redacted under FOIA.

NMFS Response: In this PRA notice, we indicated that public access to information in NIMM would be addressed in a separate *Federal Register* notice. We have added back in the statement that information subject to the Privacy Act would be redacted under FOIA. The statement that information is “subject to FOIA” does not automatically mean that such information will be released; rather, it includes all relevant statutory exemptions, such as (b)(4) and Privacy Act exemptions; the agency is not making any prejudgment of the applicability of such exemptions.

AMMPA Comment: The AMMPA provided comments on the estimated time per responses. For the public display permit application, they commented that applying for a take from the wild permit would take well over 30 hours to complete. For importing marine mammals, if the facility has materials prepared from previous submissions, 30 hours might be a reasonable estimate. For a new applicant, 30 hours would be low. The AMMPA emphasized that the time required to complete a permit application doesn’t end when the application is submitted. Typically, facilities have to spend many more hours preparing and submitting supplemental information requested after the initial application. This time should be factored into the estimate.

NMFS Response: We have increased the *average* time to 50 hours. This represents an average, would encompass new and previous permit applicants, and would primarily include only import permit applications. We have not received a permit application to take (i.e., capture) animals from the wild for public display since the late 1980’s, so it is not possible to speculate how much longer it would take to complete such an application. In addition, 50 hours is the estimated average to complete a scientific research permit application, which are generally more complex than import applications.

AMMPA Comment: AMMPA members are optimistic that the proposed use of electronic forms to complete and submit marine mammal inventory information and the option of making NIMM accessible online for Owners and Facilities who would like to report their inventory information online will improve efficiency and provide time savings. However, they were unable to provide a meaningful assessment of any potential time savings and whether NOAA’s estimate of 2 hours to complete public display inventory reporting is accurate because they have not yet had the opportunity to work with and evaluate the new system.

NMFS Response: Once we launch NIMM online to Owners and Facilities, we will solicit their input on the number of hours it takes to enter inventory information online. However, we will not release NIMM online to Owners and facilities until we have finalized the policies and procedures for NIMM (see below).

The AMMPA also provided comments on the following:

- Reporting stillbirths (AMMPA agrees that stillbirths should not be reported);
- When to report births (AMMPA believes births should only be reported if animals live 30 days and are incorporated into their collection);
- Reporting cause of death (AMMPA believes a simpler, one-tier system should be developed in lieu of the proposed two-tier system);
- Historical data (AMMPA believes historical data should be limited to only what the MMPA requires and that historical data outside this scope should be deleted);
- Public access to NIMM (AMMPA believes public access to NIMM online would create an undue burden on zoos and aquariums and that NMFS should incorporate into any new procedure and policy the recent Supreme Court ruling, *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019)).

NMFS Response: In the September 25, 2019, PRA *Federal Register* notice, we stated that we were proposing revisions to the MMDS to (1) define birth and clarify that a birth must be reported if the marine mammal is born alive, no matter how long it lives; (2) clarify that stillbirths are not required to be reported; and (3) standardize reporting of cause of death via a two-tier system. During the comment period on this notice, constituents raised concerns about the process the agency used to propose changes to the marine mammal inventory (see below). These commenters asserted that the use of the February 15 *Federal Register* notice seeking comment on “proposed policies and procedures for the administration and maintenance of the online inventory database” did not clearly state that the agency would finalize these policies and procedures through the PRA process. These same commenters expressed particular concern about the agency's proposal to exclude stillbirths from the “birth” definition.

At the same time, the AMMPA again raised concerns about the proposed changes to the cause of death reporting, and issues related to public access to various elements of the database.

The agency takes the views of our constituents very seriously, and these comments were concerning enough that we decided to remove these three proposed changes to our information collection at this time. The agency will finalize the policies and procedures for NIMM, including these proposed changes to the MMDS with respect to reporting births, stillbirths, and standardizing cause of death, at a future time. Thus, we are no longer proposing to revise the MMDS at this time with respect to birth, stillbirths, and cause of death. We will also address historical data and public access through the process to finalize the policies and procedures for NIMM.

Commenter (one letter submitted on behalf of the following): Animal Welfare Institute (AWI), Cetacean Society International, Humane Society Legislative Fund, the International Marine Mammal Project of Earth Island Institute, the Oceanic Preservation Society, People for the Ethical Treatment of Animals, The Humane Society of the United States, The Whale Sanctuary Project, Whale and Dolphin (hereafter, AWI et al.).

AWI et al. Comment 1: AWI et al. had two areas of concern related to the reporting of stillbirths: First, the process (i.e., they allege that the agency’s use of two different *Federal Register* notices seeking comments on stillbirths was confusing); and second, the substance (i.e., they argue that facilities should be required to report stillbirths).

1) Process: AWI et al. expressed concern that we did not reopen the comment period for the first *Federal Register* notice (84 FR 4443) to finalize our position on reporting stillbirths, and that instead, we are using a different process, the PRA *Federal Register* notice (84 FR 50409), and proposed wording in the marine mammal data sheets (MMDS) to provide our position. They state that NMFS has not made the public aware in this second notice that we are still seeking comment on the first notice (by raising the stillbirth reporting issue anew). They allege that this second notice “substantively modifies NMFS’ position on the reporting of stillbirths” through the PRA process.

2) Substance: AWI et al. referred to comments they submitted on the previous *Federal Register* notice (84 FR 4443), in support of defining and reporting stillbirths. AWI et al. do not support the proposal to exclude stillbirths from the marine mammal inventory reporting. They refer to their comments on the previous NIMM notice and provided comments against this proposal.

NMFS Response to AWI Comment 1: See the response to the AMMPA comment above. While we do not agree that we “substantively modified our position” on stillbirths- the February *Federal Register* notice merely said that we were seeking input on whether they should be reported- we take the views of our constituents very seriously, and these comments were concerning enough that we decided to remove the proposed changes to our information collection at this time. The agency will finalize the policies and procedures for NIMM in a separate process.

AWI et al. provided additional comments on the following:

- When to report births (AWI et al. agrees that births should be reported 30 days after the date of birth regardless of how long an animal lives);
- Reporting cause of death (AWI et al. agrees with the proposed two-tier cause of death reporting on the MMDS);
- Historical data (AWI et al believes historical data should not be deleted);
- Public access to NIMM (AWI et al. supports public access to NIMM).

NMFS Response: For reasons stated above, we have decided to remove the proposed changes to our information collection regarding reporting births and deaths at this time. We will address historical data and public access through the process to finalize the policies and procedures for NIMM.

AWI et al. further commented that:

- The proposed collection of information is necessary for the proper performance of the functions of the agency, as it will have practical utility.
- The agency's estimate of the burden (including hours and cost) of the proposed collection of information is accurate and reasonable.

Commenter: Marine Mammal Commission (MMC)

MMC Comment 1: The MMC commented that NMFS stated in its Federal Register notice that it plans to “improve the organizational structure of the public display instructions” (84 Fed. Reg. 50409), but note that we did not specify whether we plan to transition the submission of such applications to an electronic system consistent with other permit types. The MMC recommended that NMFS prioritize incorporating public display applications into APPS in accordance with the submission of all other permit applications.

NMFS Response to MMC Comment 1: Over the past 3 years, we have received only two public display applications (an average of less than 1 per year). It takes considerable time and resources to program APPS, including development and testing. APPS is also used by our West Coast Regional Office and the State of Oregon. Any changes to APPS is coordinated with these offices to minimize the amount of programming needed in order to reduce costs and maximize performance of the system. We are currently prioritizing programming APPS for parts permits and photography permits because of the higher volume of applications we receive for these permit types. After the parts and photography permit programming is complete, we will reassess the utility of programming for public display permits as the MMC suggests. In the meantime, our constituents are able to obtain a Word version of the public display application and may apply electronically via email.

MMC Comment 2: The MMC recommends that NMFS clarify that inventory information submitted by email, fax, or mail would be incorporated into the online NIMM database and encourage holders of marine mammals to submit information using the online system.

NMFS Response to MMC Comment 2: We have clarified on the NIMM forms that the information provided will be entered into the NIMM database. Once NIMM is programmed for use by zoos and aquariums to enter their data online, we will encourage them to do so.

MMC Comment 3: In its review of NMFS's revised application instructions for public display, the MMC identified minor errors, omissions, inconsistencies, and misrepresentation of

information. The MMC provided NMFS with these additional comments and recommends that NMFS incorporate them into the revised application instructions and associated forms before they are finalized.

NMFS Response to MMC Comment 3: In the majority of cases, we agree with and incorporated the MMC’s revisions into our application instructions. However, in the following instances we did not accept those revisions:

1. For UAS, edit to add fixed wing UAS mass and dimensions. This comment was also repeated in the scientific research, GA, and photography instructions.

NMFS Response: We do not believe this level of detail is required and the MMC did not provide a rationale for this recommendation. In general, UAS have minimal impacts on marine species. The applicants must address the impacts of their activities in other sections of the application.

2. Under the “Project Description” regarding transport, comment that personnel accompanying the animals during transport should be included in this section.

NMFS Response: Personnel are listed out in Section VII (Project Contacts) including their roles, qualifications, and experience. It would be duplicative to include this information in the transport section.