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Title 50 —Wildlife and Fisheries

Chapter II —National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce

Subchapter C —Marine Mammals

Part 216 —Regulations Governing the Taking and Importing of Marine Mammals

Authority: 16 U.S.C. 1361 et seq., unless otherwise noted.

Source: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart D Special Exceptions

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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) Special exception permits expire on the date specified in the permit, unless limited or extended in duration by the Director in accordance with §§ 216.36 and 216.39.
- (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, as amended at 89 FR 100402, Dec. 12, 2024]

§ 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.

[61 FR 21937, May 10, 1996]

§ 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.

[61 FR 21937, May 10, 1996]

§ 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.

[61 FR 21937, May 10, 1996]

§ 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 of time over which the research project or program will be conducted (*i.e.*, the requested period of the LOC), 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 confirmation issued under paragraph (c) of this section, unless limited or 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, as amended at 89 FR 100402, Dec. 12, 2024]

§ 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]