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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XF100

Draft National Procedure for Permit Applications to Retain Releasable Rehabilitated

Marine Mammals for Public Display

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) has developed a draft national Procedural Directive clarifying the process for eligible permit applicants to obtain releasable marine mammals for public display purposes under the Marine Mammal Protection Act (MMPA). Releasable marine mammals are those that were successfully rehabilitated by the Marine Mammal Health and Stranding Response Program's network of stranding centers and have been determined by the rehabilitation facility's attending veterinarian to be candidates for return to the wild. NMFS will no longer grant permits for the specific purpose of retaining releasable marine mammals for public display. Instead, applicants will now need to apply for a permit to take (collect) animals from the wild pursuant to the MMPA. Non-releasable animals, on the other hand, may still be obtained through NMFS' administrative procedures.

DATES: Comments must be received by *[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]*.

ADDRESSES: The draft Procedural Directive is available in electronic form via the Internet at

http://www.nmfs.noaa.gov/pr/permits/publicdisplay_permit.htm. You may submit comments by including NOAA-NMFS-2017-0096 by either of the following methods:

Federal e-Rulemaking Portal: Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2017-0096, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Send comments to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Releasable Rehabilitated Marine Mammal Procedural Directive.

Instructions: NMFS may not consider comments if they are sent by any other method, to any other address or individual, or received after the comment period ends. All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender is publicly accessible. NMFS will also accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, NMFS, Office of Protected Resources, 301-427-8402, Jaclyn.Taylor@noaa.gov.

SUPPLEMENTARY INFORMATION: Section 104 of the MMPA (16 U.S.C. 1361 *et seq.*) allows permits to be issued to take or import marine mammals for public display purposes, and section 109 requires the release of rehabilitated marine mammals to their natural habitat whenever feasible. The MMPA regulations at 50 CFR 216.27(b)(4) allow the NMFS OPR

Director to require the use of a rehabilitated marine mammal for public display (or research or enhancement) in lieu of a take from the wild.

From 2005-2016, NMFS issued three permits authorizing the retention of releasable marine mammals (rehabilitated animals cleared for release back to the wild) for public display purposes under section 104 of the MMPA and NMFS' implementing regulations at 50 CFR part 216. A permit was required for placement of releasable stranded animals (as opposed to non-releasable animals, which NMFS places in accordance with an administrative process rather than a permit) because NMFS views retention of a releasable marine mammal as the functional equivalent of a take from the wild (*i.e.*, the animal would have otherwise been released and would presumably have contributed to the wild population). These three permits were based upon NMFS' interpretation of the regulations at 50 CFR 216.27(b)(4), which state the NMFS OPR Director may require use of a rehabilitated marine mammal for public display purposes in lieu of animals taken from the wild. The three previous permit applicants were not required to request an actual "take" of animals from the wild, as the placement of a releasable animal was considered in lieu of such take.

However, NMFS received numerous public comments on the three issued permits asserting that permits to retain releasable marine mammals are in direct contradiction to the purpose of Title IV and section 109(h) of the MMPA, which mandate the rescue and rehabilitation of stranded marine mammals with the goal of releasing the animals to the wild when feasible. Commenters specifically expressed concerns that the process for assessing the actual impact of a take from the wild was largely circumvented.

After evaluation and reconsideration of this permit process and as a result of public

comments on the three permits issued, NMFS has developed a new draft Procedural Directive to clarify its interpretation of MMPA regulations and procedures for authorizing releasable rehabilitated marine mammals to be retained for purposes of public display.

In the Procedural Directive, NMFS is proposing to no longer issue permits for the specific purpose of obtaining releasable marine mammals from the National Stranding Network for public display. Instead, would-be applicants must apply for a permit to take (collect) from the wild pursuant to the MMPA. In the event NMFS decides to grant such a permit, the NMFS OPR Director may then, at his or her discretion, require that a releasable rehabilitated marine mammal be substituted for capturing an animal from the wild, in accordance with 50 CFR 216.27.

NMFS believes this approach is more consistent with the statutory provisions governing rehabilitation and release of stranded marine mammals (MMPA section 109(h) and MMPA Title IV), which are separate and distinct from the provisions governing issuance of permits for the take of animals from the wild for purposes of public display (MMPA section 104).

Dated: November 6, 2017.

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