



## **DEPARTMENT OF COMMERCE**

### **National Oceanic and Atmospheric Administration**

#### **Proposed Information Collection; Comment Request; Basic Requirements for Special Exception Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection Act, the Fur Seal Act, and/or the Endangered Species Act**

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the Internet at [PRAComments@doc.gov](mailto:PRAComments@doc.gov)). Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic

comments in Microsoft Word, Excel, or Adobe PDF file formats.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy Sloan or Carrie Hubard, NOAA Fisheries Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, (301) 427-8401, Amy.Sloan@noaa.gov or Carrie.W.Hubard@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

*I. Abstract*

This request is for a revision and extension of a currently approved information collection.

The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; MMPA), Fur Seal Act (16 U.S.C. 1151 *et seq.*; FSA), and Endangered Species Act (16 U.S.C. 1531 *et seq.*; ESA) prohibit certain activities affecting marine mammals and endangered and threatened species, with exceptions. Pursuant to Section 104 of the MMPA and Section 10(a)(1)(A) of the ESA, special exception permits may be obtained for scientific research and enhancing the survival or recovery of a species or stock of marine mammals or endangered or threatened species. Section 104 of the MMPA also provides for Letters of Confirmation under a General Authorization for scientific research and permits for commercial and educational photography of marine mammals that involve only Level B harassment of marine mammals; permits for capture and/or import of marine mammals for public display; and inventory reporting pertaining to marine mammals in public display facilities.

The regulations pertaining to permits and associated reporting requirements under the

MMPA and FSA are at 50 CFR Part 216; the regulations for permit requirements under the ESA are at 50 CFR Part 222. The required information in this collection is used to make the determinations required by the MMPA, FSA, ESA and their implementing regulations prior to issuing a permit; to establish appropriate permit conditions; to evaluate the impacts of the proposed activity on protected species; and, to ensure compliance with the Acts. The marine mammal inventory forms ensure compliance with MMPA reporting requirements and allow NMFS to maintain the National Inventory of Marine Mammals (NIMM), as required by the MMPA.

This information collection applies to certain protected species for which NMFS is responsible: cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions); and, for ESA scientific research and enhancement permits: sawfish (largetooth and smalltooth), sea turtles (in water), sturgeon (Atlantic and shortnose), and certain foreign ESA-listed species. This information collection may be used for future ESA-listed species.

We propose to revise the currently-approved special exception permit application instructions to: 1) improve readability by changing the font, adding color, removing jargon, eliminating extraneous text, incorporating bullets and numbered lists, and reorganizing sentence structure; 2) be more user-friendly by consolidating pages, shortening and moving background information to the end, and removing sections that don't apply to specific permit types; 3) eliminate the requirement for applicants to provide scientific names of protected species; 4) update the information required to use unmanned aircraft systems; 5) reduce time spent asking for additional information from applicants by eliminating the requirement for proposed take

numbers to be included in both the narrative and table sections of the application; 6) require most permit personnel to use a specialized qualifications form instead of submitting resumes, thus reducing time spent clarifying personnel experience; 7) provide examples of qualification forms for different personnel types; 8) provide detailed procedure options for those requesting parts permits; 9) put questions about potential effects to the environment in plain language; 10) improve organizational structure of the public display instructions, since those applicants do not submit via our online system; and 11) include examples of take tables for import and capture from the wild in the public display instructions. In addition, we propose to remove the requirement that permit applicants provide the name and contact information of Authorized Recipients who may receive protected species parts. Moving forward, we propose to allow permit holders to designate their own Authorized Recipients, which will give them more flexibility and autonomy and will save time by removing the need to request an authorization letter. We also propose to make photography and parts permit applications accessible via our online application system known as APPS (Authorizations and Permits for Protected Species; <https://apps.nmfs.noaa.gov>).

The MMPA requires NMFS to establish and maintain an inventory of marine mammals in zoos and aquariums. On February 15, 2019, we published a Federal Register notice (84 FR 4443) seeking comment on policies and procedures for implementing NMFS' National Inventory of Marine Mammals (NIMM). We extended the public comment period to July 31, 2019 (84 FR 15593). After review and consideration of public comments (available at: <https://www.regulations.gov/docket?D=NOAA-NMFS-2019-0012>), we are proposing certain

inventory reporting revisions. Public access to NIMM is not the subject of this notice and is not addressed here. We will provide a separate opportunity to comment on public access to NIMM. This notice only pertains to inventory reporting requirements.

In addition to providing holders of marine mammals (i.e., Owners and Facilities) electronic forms to complete and submit marine mammal inventory information via email, fax, or mail (as is currently done), we propose to make the online inventory, NIMM, accessible to holders of marine mammals for those who would like to report their inventory information online. We propose revisions to the current inventory form known as the marine mammal data sheet (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 (when determined) to include a simple, two-tier system that reflects the primary body system or circumstance of the cause of death (Tier 1) with the significant findings underlying that body system or circumstance (Tier 2). This information could also be entered in the online format noted above. Below we respond to comments received regarding these three points during the February 15 to July 31, 2019 comment period on NIMM.

Birth and Stillbirth: Several commenters opposed the reporting of stillbirths, suggested we modify our proposed definition of birth to clarify it only pertains to live animals, and remove any reference to reporting stillbirths in the cause of death section of the MMDS. We have done so in the proposed revised MMDS. One comment suggested that a stillbirth should be reported as a birth and that such information has scientific and welfare value. While we acknowledge that information in the inventory is of value to the U.S. Department of Agriculture, Animal and Plant

Health Inspection Service (the agency with oversight for the humane handling care, treatment and transportation of marine mammals), we believe that the intent of the inventory is to track individual marine mammals over their lifetime. The inventory requires both birth and death information for each animal. We interpret this to imply that a marine mammal must be born alive to enter the inventory. We also propose to clarify on the MMDS that a birth of a live marine mammal must be reported regardless of how long the animal lives, as some zoos and aquariums have interpreted the requirement to report births as only including marine mammals in the inventory if they live for 30 days.

Cause of Death: Some commenters supported the proposed two-tier system cause of death reporting as a “much-needed improvement” and an “innovative method of standardizing and reporting” to allow “enough detail to accurately characterize the event.” We received suggestions to improve the accuracy of the cause of death information, which we have incorporated into the revised MMDS. Once a body system or circumstance is selected for the underlying cause of death (Tier 1), multiple selections can be made from the associated Tier 2 level. However, because we are seeking the primary body system or circumstance to be reported, and due to associated programming challenges, we propose that only a single Tier 1 factor may be selected at this time.

We also received opposing comments to the use of the two-tier system, including that it exceeded the required statement of “cause of death,” was “too complicated,” should only have one tier, and could only be based on findings that would be developed through a necropsy. We first clarify that we do not require necropsy reports be submitted to the inventory to report cause

of death. The MMPA states that cause of death must be reported “when determined,” implying that analyses be performed (such as necropsy and tissue analysis, as is standard when determining cause of death), before reporting it to the inventory. As one commenter noted, cause of death reporting has been “uneven and variable” via *ad libitum* reports of death as provided in a text field. For example, we have received reports with vague information such as “expired after a prolonged illness” compared to reports with information such as “metastatic squamous cell carcinoma.” The two-tier system provides a mechanism to provide a standardized, simple statement of the cause of death (e.g., Liver [Tier 1 Body System]; Cancer/Neoplastic - Primary [Tier 2 Significant Finding]).

Additional Comments: Regarding additional comments we received such as on historical information in NIMM and providing a mechanism for zoos and aquariums to verify the accuracy of their information in NIMM, we propose to address those comments in a separate notice prior to making NIMM available for online reporting by marine mammal holders. As mentioned previously, public access to NIMM will be addressed in a separate notice.

## *II. Method of Collection*

Currently-approved permit applications, permit report form information, and inventory forms are available as downloadable Word or PDF versions online at

<https://www.fisheries.noaa.gov/permits-and-forms#protected-resources> or via email.

Respondents may submit all applications, forms, and reports by email, facsimile, or mail.

Respondents may currently also submit scientific research and enhancement permit applications (including parts permit applications) and Letters of Intent under the General Authorization online

via APPS. Reports for most permits can be submitted online via APPS.

Under the proposed revision, in addition to the modes of access and submission listed above, photography permit applications would be made available online via APPS, a simplified parts permit application module would be developed in APPS, and marine mammal inventory reporting would be made available online via NIMM.

### *III. Data*

*OMB Control Number:* 0648-0084.

*Form Number(s):* None.

*Type of Review:* Regular submission (revision and extension of previously-approved collection).

*Affected Public:* Individuals; Business or other for-profit organizations; Not-for-profit institutions; State, Local, or Tribal government; Federal government.

*Estimated Number of Respondents:* 415. This is the estimated total number, annually, of persons or organizations anticipated to 1) apply for an MMPA, FSA, and/or ESA permit or authorization; 2) submit annual permit reports and modification requests; and 3) submit marine mammal inventory reports. This number is, respectively, based on 1) the number of permit applications anticipated to be received annually (from reviewing data from 2016-2018); 2) the number of current permit holders required to submit annual reports and who may request to modify their permit; and 3) the total number of currently active marine mammal facilities subject to inventory reporting requirements.

*Estimated Time Per Response:* The estimated *average* amount of time it takes to

complete each information collection instrument is as follows. Scientific research permit applications, 50 hours; public display permit applications, 30 hours; photography permit applications, 10 hours; General Authorization Letters of Intent, 10 hours; major permit modification requests, 35 hours; minor permit modification requests, 3 hours; scientific research permit reports, 12 hours; scientific research parts only permit reports, 8 hours; General Authorization reports, 8 hours; public display permit reports, 2 hours; photography permit reports, 2 hours; public display inventory reporting, 2 hours; and general record keeping, 2 hours per each type.

*Estimated Total Annual Burden Hours: 6,711.*

*Estimated Total Annual Cost to Public: \$1,000* in recordkeeping/reporting costs. This represents costs for mailing in applications, forms, and reports. The majority of respondents use electronic submission formats but some still mail in applications, forms, and reports. This estimate excludes time required to complete the applications, forms, and reports, and any equipment such as computers needed to complete them.

#### *IV. Request for Comments*

Comments are invited on: a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; c) ways to enhance the quality, utility, and clarity of the information to be collected; and d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection

techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

**Sheleen Dumas,**

*Departmental Lead PRA Officer,*

*Office of the Chief Information Officer,*

*Commerce Department.*

**BILLING CODE 3510-22-S**

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