Appendix E

Requirements for Obtaining a Grant or Permit for Research on Protected Species

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Permit Process

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ACRONYMS AND ABBREVIATIONS

AMNWR	Alaska Maritime National Wildlife Refuge
APHIS	Animal and Plant Health Inspection Service
CE	Categorical Exclusion
CFR	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act
F/PR1	NMFS Permits Division, Office of Protected Resources
IACUC	Institutional Animal Care and Use Committee
MMC	Marine Mammal Commission
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
U.S.	United States

Permitting Process Summary

The permit process is a regulatory process. The Endangered Species Act (ESA), and the Marine Mammal Protection Act (MMPA) established moratoria on "taking" marine mammals and threatened or endangered species. Both statutes provide some exemptions and exceptions to these moratoria. Scientific research permits under the MMPA and recovery permits under the ESA are two of the most commonly used exemptions. The MMPA and ESA specify a limited range of circumstances under which the National Marine Fisheries Service (NMFS) Permits Division, Office of Protected Resources (F/PR1) may decide to grant an exemption through issuance of a permit. F/PR1 has promulgated regulations to implement these provisions of the MMPA and ESA. A summary of these and other applicable statutes and regulations are included as Attachment A.

An applicant requesting an exemption to a take moratorium must demonstrate that permit issuance would not be detrimental to protected species (i.e., will not disadvantage, jeopardize, or otherwise adversely affect a protected species). Accordingly, the MMPA, ESA, and NMFS implementing regulations establish information requirements for permit applicants.

Detailed information regarding what types of activities require permits and who may apply for permits, as well as instructions specific to the different types of marine mammal permits and authorizations are available from the F/PR1 website: http://www.nmfs.noaa.gov/pr/. In summary, applicants seeking a special exemption permit for scientific research must submit a properly formatted and signed application to the Office Director. The applicant must describe the species to be taken, the manner and duration of the takes, the qualifications of the researchers to conduct the proposed activities, and the justification for such taking. The applicant must also provide sufficient information about the activity to allow NMFS to determine whether permit issuance would comply with all applicable statutory and regulatory issuance criteria and to assess the potential environmental impacts of permit issuance. An application that satisfies some but not all of the applicable criteria for permit issuance will be returned without prejudice to the applicant with an explanation of the deficiencies. F/PR1 provides an opportunity for the applicant to supply the deficient information. The permit process cannot proceed further until F/PR1 has a complete application. If an applicant currently holds a permit to take marine mammals, or has held a permit in the past, the new application will not be processed until all reports required to date under such permits have been submitted.

The Office Director makes an initial determination regarding the appropriate level of review for the complete application required under National Environmental Policy Act (NEPA). NEPA requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies

must either prepare a detailed statement (known as an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or classify the action as categorically excluded from the requirements of NEPA. A Categorical Exclusion (CE) is defined as:

> *a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in adoption of these procedures (Section 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required* (40 CFR 1508.4).

If the proposed action qualifies for a Categorical Exclusion under rules implementing NEPA, the application process continues with the next step. If the Office Director determines that an EA or an EIS is required, the appropriate document must be completed before the application process continues. Additionally, if the permit application directly involves a threatened or endangered species or may indirectly affect a species listed under ESA, there will be additional environmental analysis required including a section 7 consultation and the preparation of a biological opinion (NMFS 2006d).

The next two steps occur simultaneously: F/PR1 sends the application out for scientific review and publishes a Notice of Receipt in the *Federal Register* to begin a mandatory 30-day public review and comment period. The Office Director may extend this comment period and hold public hearings on the application at his/her discretion. The application is distributed to several reviewers, who may include the Marine Mammal Commission (MMC) and its Committee of Scientific Advisors on Marine Mammals, National Oceanic and Atmospheric Administration (NOAA) Fisheries Office of Law Enforcement, and appropriate NMFS scientists and federal agencies. The application may also be sent to appropriate independent experts at the discretion of the Office Director (NMFS 2006d). For permits involving ESA-listed species, NMFS Endangered Species Division will also receive a copy of the application. The reviewers have a period of at least 45 days or longer (as established by the Office Director) to submit their comments on the application. If no comments are received in that time, it is assumed that there are no objections to issuance of the permit.

After considering the comments and recommendations of all reviewers, the Office Director will reassess the level of NEPA review required by the proposed project. If that determination requires a more extensive environmental assessment than was indicated in the initial NEPA review (i.e., from a CE to an EA or from an EA with a finding of no significant impact to an EIS), the new NEPA review must be completed before the permit process can continue. If no new NEPA analysis is required, the process continues.

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. The decision to issue or deny a permit will be based upon:

- All relevant issuance criteria set forth in 50 CFR 216.41
- All purpose-specific issuance criteria as appropriate set forth in 50 CFR 216.41-43
- All comments received or views solicited on the permit application
- Any other information or data that the Office Director deems relevant

If the permit is issued, a *Federal Register* Notice of Decision is published within 10 days, and 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 agrees to abide by all terms and conditions set forth in the permit and acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director. If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial. 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 United States (U.S.) District Court as provided for by law. Attachment B provides an example of a typical permit to take protected species for scientific and/or enhancement purposes.

Permit Amendments

Scientific research permits may be amended by the Office Director. Requests for amendments to permits should be submitted in writing to the Chief of NMFS F/PR1, and should address all applicable sections of these instructions, including a detailed description of the proposed changes. Amendment requests involving an increase in number, changes of location or species, or more intrusive activities are subject to a 30-day public review and are granted or denied at the discretion of the Office Director. Amendment requests must be endorsed and signed by the principal investigator named in the permit. Less intrusive activity or minor changes not involving numbers, species, or locations may be authorized at the discretion of the Office Director without public review.

Other Permits Needed for Research

Researchers may also need to obtain special use permits for working on and near state, federal, and Native lands in addition to obtaining research permits from F/PR1. NMFS requires research applicants to obtain and abide by all applicable permits as a condition of permitting research and receiving grants. The following is a partial list of permits that may be required, depending on the nature and location of research activities:

- Under the Animal Welfare Act, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS) has jurisdiction over captive warm-blooded animals, including marine mammals. APHIS has established regulations and standards for animal care of which 9 CFR 3.100 Subpart E: Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals is particularly applicable. Most U.S. facilities maintaining marine mammals are required to be licensed or registered by APHIS.
- The Native village governments of St. Paul and St. George control access to the rookeries and haulouts on the Pribilof Islands. Many other Alaska coastline areas are owned by Native corporations or have been claimed for conveyance under the Alaska National Interest Lands Conservation Act. Research taking place on Native land typically requires a special use permit from one or more Native organizations.
- Military clearance (U.S. Navy) is required for access to Adak, Shemya, Amchitka, and Attu Islands in the Aleutian Chain.
- U.S. Coast Guard permits are required for operating marine vessels in U.S. waters, with certification for types of use and numbers of passengers on a vessel specific basis. They also issue permits for working around lighthouses that they maintain.
- A Special Use Permit is required from the U.S. Fish and Wildlife Service for work in national wildlife refuges, including the Alaska Maritime National Wildlife Refuge (AMNWR).
- The Alaska Department of Natural Resources, Division of Mining, Land, and Water requires a Land Use Permit for working and/or camping on State lands longer than 14 days or if more substantial structures are erected.
- A permit might be required by the Alaska Department of Fish and Game if the use will take place in a state game refuge or special use area, tidelands and submerged lands adjacent to national parks, refuges, and reserves, such as AMNWR, Kenai Fjords National Park coastline, Resurrection Bay, Lake Clark National Park coastline, Marmot Island (eastern half), and the Togiak coastline.
- The National Park Service has a national research permit and reporting system that is park specific and project specific.
- The respective departments of state lands and parks for Washington, Oregon, and California also have special land use permits that may apply on their lands. These state agency land-use permits are oriented toward reviewing consumptive uses rather than temporary camps in remote places. All are project and area specific.

REFERENCES

NMFS (2006d) for "National Marine Fisheries Service. 2006 FAQs – Marine mammal Permits for Directed Take. Retrieved December 10 from: http://www.nmfs.noaa.gov/pr/permits/faq_mmpermits.htm"

Attachment A

Summary of Statutory and Regulatory Requirements for Research, Enhancement, and Recovery Permit Issuance

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Summary of Statutory and Regulatory Requirements for Research, Enhancement, and Recovery Permit Issuance

Prepared by
National Marine Fisheries Service
Office of Protected Resources
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2006

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Specific federal statutes and regulations related to research on marine mammals and threatened and endangered species under the jurisdiction of the National Marine Fisheries Service

NMFS has authority, delegated from the Secretary of Commerce, to issue permits for research and enhancement activities under Section 104 of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) and section 10(a)(1)(A) of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*).

Permits to take non-marine mammal endangered or threatened species are governed by the ESA and NMFS implementing regulations at 50 CFR §222.301-309. Where coordination with the US Fish and Wildlife Service is required regarding sea turtles, permits are also subject to NMFS regulatory criteria at 50 CFR §222.309.

Permits to take marine mammal species that are not listed as endangered or threatened are governed by the MMPA and NMFS implementing regulations at 50 CFR §216.31-41. Note that when issuance of these permits may affect species listed under the ESA, issuance of permits is subject to additional review pursuant to section 7 of the ESA.

Permits to take marine mammals that are listed as endangered or threatened are governed by the ESA and MMPA, and all applicable criteria under NMFS implementing regulations at 50 CFR §222.301-309 and 50 CFR §216.31-41. Note that if such an application does not satisfy all applicable ESA criteria, it should not be considered further under the MMPA, and vice versa.

Other applicable federal statutes and regulations
As a federal agency, issuance of permits by NMFS is governed by the procedural requirements and provisions of the Administrative Procedure Act and the National Environmental Policy Act.

The **Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*)** is the law under which federal regulatory agencies, including NMFS, create the rules and regulations necessary to implement and enforce major legislative acts such as the MMPA and ESA. Under the APA, NMFS is required to publish in the *Federal Register* descriptions of rules of procedure, substantive rules of general applicability, and make available to the public statements of policy and interpretation, administrative staff manuals and instructions. The APA also contains procedures for judicial review of agency decisions and for finding agency actions and conclusions unlawful. Under the APA courts may set aside agency actions as arbitrary and capricious, an abuse of discretion, unconstitutional, beyond statutory authority, unsupported by substantial evidence or unwarranted by the facts.

The written record of the information and process relied upon by NMFS in deciding to issue or deny a permit is the agency's only defense in the case of such judicial review under the APA. For this reason, NMFS needs to maintain a thorough written record documenting the information reviewed and relied upon in making its conclusions as well as a written record of the process by which the information was used.

The **National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*)** requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must either prepare a detailed statement (known as an Environmental Assessment (EA) or Environmental Impact Statement (EIS)) or classify the action as categorically excluded from the

requirements of NEPA to prepare such statements. The requirement of NEPA apply to NMFS "decision-making process" for issuance of permits.

NOAA Administrative Order No. 216-6 (NAO 216-6), Environmental Review Procedures for Implementing the National Environmental Policy Act, is an agency guidance document for applying the requirements of NEPA to agency actions, including permit issuance. With regard to permits issued pursuant to the ESA, Section 6 of NAO 216-6 specifies:

> *In general, permits for scientific purposes or to enhance the propagation or survival of listed species issued pursuant to sec 10(a)(1)(A) of the ESA qualify for a CE (except for permits covered in section 6.03e.2.(c)). The factors listed in Section 5.05b of this Order must be considered in all CE determinations on permits. The RPM must also consider the cumulative impact on the listed species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species.*

For permits issued pursuant to the MMPA, NAO 216-6 specifies that:

> *In general, scientific research, enhancement, photography, and public display permits issued under section 101(a)(1) and 104 of the MMPA, and letters of confirmation for activities conducted under the General Authorization for Scientific Research established under section 104 of the MMPA, qualify for a CE. The factors listed in Section 5.05b of this Order must be considered in all CE determinations on permits. The RPM must also consider the cumulative impact on the protected species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species. Research activities conducted under the General Authorization for Scientific Research will be reviewed periodically for cumulative impact.*

With regard to Exceptions for Categorical Exclusions, Section 5.05c. of the Order specifies:

> *The preparation of an EA or EIS will be required for proposed actions that would otherwise be categorically excluded if they involve a geographic area with unique characteristics, are subject of public controversy based on potential environmental consequences, have uncertain environmental impacts or unique or unknown risks, establish a precedent or decision in principle about future proposals, may result in cumulatively significant impacts, or may have any adverse effects upon endangered or threatened species or their habitats.*

Given the last phrase in section 5.05c, GCF has determined that issuance of permits for takes of threatened and endangered species is not categorically excluded from preparation of an EA or EIS. Thus, a minimum of an EA is prepared prior to issuance of permits pursuant to section 10(a)(1)(A) of the ESA.

<u>Other substantive statutes</u>

In addition to compliance with the MMPA and ESA, issuance of permits by NMFS cannot violate other substantive federal, state, or local statutes or regulations. [Other federal statutes that are most often relevant to activities under NMFS permits include the Animal Welfare Act (AWA), the National Marine Sanctuaries Act, the Magnuson-Stevens Act, the Convention on International Trade in Endangered Species of Flora and Fauna (CITES), Coastal Zone Management Act, etc.] This means that NMFS

cannot issue permits pursuant to its authority under section 104 of the MMPA and section 10(a)(1)(A) of the ESA for activities that, when exercised under the NMFS permit, would be in violation of these other federal, state or local laws.

For example, NMFS cannot issue permits for activities with marine mammals that would not be consistent with the AWA requirements for humane handling, care, and treatment of animals. Similarly, NMFS cannot authorize by permit an un-licensed person to conduct activities in a state where conduct of such activities requires State license.

To ensure that activities permitted by NMFS would comply with other applicable federal, state, and local statutes and regulations, NMFS provides copies of applications to and consults with other federal and state agencies where appropriate and incorporates their recommendations into permit conditions.

PERMITS FOR THREATENED AND ENDANGERED SPECIES

ESA Statutory Permit Issuance Criteria (16 U.S.C. 1539 Sec. 10 (a)(1)(A) and 10(d))

The Secretary may permit, under such terms and conditions as he shall prescribe – (A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j).

The Secretary may grant exceptions under subsections (a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that (1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of this Act.

Section 2 of the ESA sets forth the purposes and policy of the Act. The purposes of the ESA are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be **conserved**, to provide a program for the **conservation** of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in section 2(a) of the ESA.

The policy of the ESA is that all Federal departments and agencies shall seek to **conserve** endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of the ESA. The ESA defines "conserve" and "conservation" as (emphasis added):

> to use and the use of all methods and procedures which are necessary **to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the ESA] are no longer necessary**. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

ESA Regulatory Permit Issuance Criteria (50 CFR §222.308(c))

The Assistant Administrator, in determining whether to issue permits and amendments to take endangered and threatened species must consider the following 12 criteria at 50 CFR §222.308(c). Note that the first three criteria are a reiteration of the requirements under Section 10(d) of the ESA.

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;
(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the ESA;
(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;
(5) The status of the population of the requested species and the effects of the proposed action on the population, both direct and indirect;
(6) If a live animal is to be taken, transported, or held in captivity, the applicant's qualifications for the proper care and maintenance of the species and the adequacy of the applicant's facilities;
(7) Whether alternative non-endangered species or population stocks can and should be used;
(8) Whether the animal was born in captivity or was (or will be) taken from the wild;
(9) Provision for disposition of the species if and when the applicant's project or program terminates;
(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;
(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application;
(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application;

PERMITS FOR MARINE MAMMALS

MMPA Statutory Permit Issuance Criteria (16 U.S.C. 1374 Sec. 104)

Section 104 of the MMPA specifies when and how a permit may be issued for taking marine mammals for public display, research (including the General Authorization), enhancement, and commercial or educational photography. This section of the MMPA also specifies criteria related to permits for public display or for commercial or educational photography. However, those types of permits are not discussed here.

Imposition; Exceptions (16 U.S.C. 1374 Sec. 101(b)): *Consistent with the provisions of section 104, permits may be issued by the Secretary for taking, and importation purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival of recovery of a species or stock ….Such permits … may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under title II. The Commission and Committee shall recommend any proposed taking or importation … which is consistent with the purposes and policies of section 2 of this Act.*

> Section 2 is very long but some of the main points made are (1) marine mammals should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem; (2) efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species; and (3) they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. (16 U.S.C. 1361 Sec. 2)

Requisite Provisions (16 U.S.C. 1374 Sec. 104(b)): *Any permit issued under this section shall –*

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify –

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

> The MMPA defines "humane" in the context of taking a marine mammal as "that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved." (16 U.S.C. 1362 Section 3)

Bona fide science (16 U.S.C. 1374 Sec. 104(c)(3)(A)): *The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose.*

> The MMPA defines "bona fide research" as (16 U.S.C. 1362 Section 3):
>
> *scientific research on marine mammals, the results of which –*
>
> *(A) likely would be accepted for publication in a refereed scientific journal;*
>
> *(B) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or*
>
> *(C) are likely to identify, evaluate or resolve conservation problems.*

Lethal taking(16 U.S.C. 1374 Sec. 104(c)(3)(B))

No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

General Authorization (16 U.S.C. 1374 Sec. 104(c)(3)(C))

This section of the MMPA allows "bona fide scientific research that may result only in taking by level B harassment of a marine mammal." NMFS has promulgated regulations at 50 CFR 216.45 to implement this provision of the MMPA. As a matter of policy, NMFS does not consider applications for takes of pinnipeds on rookeries (except aerial surveys at altitudes greater than 1,000 feet) as appropriate under the GA because of the potential for the disturbance to result in separation of mother-pup pairs or mortality of pups.

The MMPA requires persons wishing to work under the GA to submit a letter of intent containing the following:

(i) The species or stocks of marine mammals which may be harassed.

(ii) The geographic location of the research.

(iii) The period of time over which the research will be conducted.

(iv) The purpose of the research, including a description of how the definition of bona fide research as established in this Act would apply.

(v) Methods to be used to conduct the research.

Enhancement (16 U.S.C. 1374 Sec. 104(c)(4)(A))

A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that –

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation plan in place, with the Secretary's evaluation of 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 plan or a recovery plan.

Captive Maintenance (16 U.S.C. 1374 Sec. 104(c)(4)(B))

A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only of the Secretary –

(i) determines that the captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

MMPA Regulatory Permit Issuance Criteria (50 CFR ''216.34 and 216.41)

(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

The MMPA defines "humane" in the context of taking a marine mammal as "that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved." (16 U.S.C. 1362 Section 3)

(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.*

Permits for scientific research and enhancement (50 CFR 216.41)
In addition to the requirements under §§216.33 through 216.38, permits for scientific research and enhancement are governed by the following requirements:

Note: §216.33 = Permit application submission, review, and decision procedures; §216.34 = Issuance criteria; §216.35 = Permit restrictions; §216.37 = Marine mammal parts; §216.38 = Reporting]

(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 depleted 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 MMA;

(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.

MMPA Regulatory Permit Restrictions (50 CFR §216.35)

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) The maximum period of any special exception permit issued, or any major amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of Sec. 216.39, the period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit.

(c) Except as provided for in Sec. 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.

MMPA Regulatory Permit Conditions (50 CFR §216.36)

(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.

(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.

<u>MMPA Regulatory Requirements for Permit Amendments</u> (50 CFR §216.39)

(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.

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Attachment B

Example of Permit to Take Protected Species for Scientific and/or Enhancement Purposes

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Permit No. xxxx-xxxx-xx
Expiration Date: month dd, yyyy
Reports Due: month dd, annually

PERMIT TO TAKE PROTECTED SPECIES[1] FOR SCIENTIFIC AND/OR ENHANCEMENT PURPOSES

I. Authorization

This permit is issued to Name of Permit Holder (hereinafter "Permit Holder"), Affiliation, address, [Responsible Party: Name], pursuant to the provisions of the Marine Mammal Protection Act of 1972 as amended (MMPA; 16 U.S.C 1361 et seq.*); the regulations governing the taking and importing of marine mammals (50 CFR Part 216); the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531* et seq.*); the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR Parts 222-226); and the Fur Seal Act of 1966 (16 U.S.C. 1151* et seq.*).*

II. Abstract

The objective(s) of the permitted activity, as described in the application, is/are to [briefly summarize objectives from application. Note: it is not necessary to list or summarize the research methods or activities here (that's what the Take Tables are for), just the objectives of the study.].

III. Terms and Conditions

The activities authorized herein must occur by the means, in the areas, and for the purposes set forth in the permit application, and as limited by the Terms and Conditions specified in this permit, including all attachments and appendices. Any permit noncompliance constitutes a violation and is grounds for permit modification, suspension, or revocation, and for enforcement action.

A. Duration of Permit

1. Personnel listed in Condition C.1 of this permit (hereinafter "Researchers") may conduct activities authorized by this permit through month dd, yyyy. This permit expires on the date indicated and is non-renewable. This permit may be extended by the Director, NMFS Office of Protected Resources, pursuant to applicable regulations and the requirements of the MMPA and ESA.

2. Researchers must suspend all permitted activities in the event serious injury[2] or mortality[3] of protected species occurs / reaches that specified in Table(s) X of Section B.1. The Permit Holder must contact the Chief, NMFS Permits, Conservation and Education Division (hereinafter "Permits Division") by phone (301-713-2289) within two business days. The Permit Holder must also submit a written incident report as described in

[1] "Protected species" include species listed as threatened or endangered under the ESA, and marine mammals.
[2] A serious injury is defined by regulation as any injury that will likely result in mortality.
[3] This permit allows for /does not allow for unintentional serious injury and mortality caused by the presence or actions of researchers up to the limit in Table X. This includes, but is not limited to; deaths of dependant young by starvation following research-related death of a lactating female; deaths resulting from infections related to sampling procedures; and deaths or injuries sustained by animals during capture and handling, or while attempting to avoid researchers or escape capture.

Condition E.2. The Permits Division may grant authorization to resume permitted activities based on review of the incident report and in consideration of the Terms and Conditions of this permit.

3. If authorized take[4] is exceeded, Researchers must cease all permitted activities and notify the Chief, NMFS Permits, Conservation and Education Division (hereinafter "Permits Division") by phone (301-713-2289) as soon as possible, but no later than within two business days. The Permit Holder must also submit a written incident report as described in Condition E.2. The Permits Division may grant authorization to resume permitted activities based on review of the incident report and in consideration of the Terms and Conditions of this permit.

4. The Permit Holder must terminate all research activities under this permit at the end of each permit year/field season (*i.e.*, December 31) and request authorization to resume research for each succeeding year. Re-authorization of permitted activities will be based primarily on the Permits Division's evaluation of the annual report required pursuant to Condition E.3. Reauthorization of this permit may be denied or delayed if the annual report has not been received or approved. Authorization of each year's research does not guarantee or imply that NMFS will authorize subsequent years' activities.

B. <u>Number and Kind(s) of Protected Species, Location(s) and Manner of Taking</u>

1. The table(s) in Appendix 1 outline(s) the number of protected species, by species and stock, authorized to be taken, and the locations, manner, and time period in which they may be taken.

2. Researchers working under this permit may collect visual images (*i.e.*, any form of still photographs and motion pictures) as needed to document the permitted activities, provided the collection of such images does not result in takes of protected species.

   a. The Permit Holder may use these images in printed materials (including commercial or scientific publications) and presentations provided the images are accompanied by a statement indicating that the activity depicted was conducted pursuant to Permit No. xxx-xxxx. This statement must accompany the images in all subsequent uses or sales.

   b. Annual reports required pursuant to Condition E.3 must note such incidental scientific, educational, or commercial uses of the images.

[4] By regulation, a take under the MMPA means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild. Under the ESA, a take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to do any of the preceding.

3. Upon written request from the Permit Holder, approval for photography, filming, or audio recording activities not essential to achieving the objectives of the permitted activities, including allowing personnel not essential to the research (*e.g.* a documentary film crew) to be present, may be granted by the Chief, Permits Division.

    a. Where such non-essential photography, filming, or recording activities are authorized they must not influence the conduct of permitted activities in any way or result in takes of protected species.

    b. Personnel authorized to accompany the Researchers during permitted activities for the purpose of non-essential photography, filming, or recording activities are not allowed to participate in the permitted activities.

    c. Annual reports required pursuant to Condition E.3 must note such non-essential activities.

    d. The Permit Holder and Researchers cannot require or accept compensation in return for allowing non-essential personnel to accompany Researchers to conduct non-essential photography, filming, or recording activities.

4. Researchers must comply with the following conditions related to the manner of taking:

    a. Insert here an alphabetized list of any other restrictions on time, location, manner, etc., as appropriate for specific activity, location, and taxa. See "pinniped research conditions," "cetacean research conditions," "sea turtle research conditions," "sturgeon and sawfish research conditions," "abalone research conditions," and "enhancement conditions" in templates folder

5. The Permit Holder must comply with all provisions specified in Attachment 1 of this permit for biological samples collected, obtained, imported or exported under authority of this permit.

6. Researchers must comply with the following conditions related to methods of capture, supervision, care, and transportation

    a. Insert here an alphabetized list of "captive conditions"

C. <u>Qualifications, Responsibilities, and Designation of Personnel</u>

1. The following Researchers may participate in the conduct of the permitted activities in accordance with their qualifications and the limitations specified herein:

    a. Principal Investigator – [name];
    b. Co-Investigator(s) – [names];

c. Research Assistants – any personnel identified by the Permit Holder or Principal Investigator and qualified to act pursuant to Conditions C.2, C.3, and C.4 of this permit; and
d. Permit Holder – [name].

2. Individuals conducting permitted activities must possess qualifications commensurate with their roles and responsibilities. The roles and responsibilities of personnel operating under this permit are as follows:

   a. The Permit Holder is ultimately responsible for all activities of any individual who is operating under the authority of this permit. Where the Permit Holder is an institution/facility, the Responsible Party is the person at the institution/facility who is responsible for the supervision of the Principal Investigator.

   b. The Principal Investigator (PI) is the individual primarily responsible for the taking, import, export and any related activities conducted under the permit. The PI must be on site during any activities conducted under this permit unless a Co-Investigator named in Condition C.1 is present to act in place of the PI.

   c. Co-Investigators (CIs) are individuals who are qualified to conduct activities authorized by the permit without the on-site supervision of the PI. CIs assume the role and responsibility of the PI in the PI's absence.

   d. Research Assistants (RAs) are individuals who work under the direct and on-site supervision of the PI or a CI. RAs cannot conduct permitted activities in the absence of the PI or a CI.

3. Personnel involved in permitted activities must be reasonable in number and essential to conduct of the permitted activities. Essential personnel are limited to:

   a. Individuals who perform a function directly supportive of and necessary to the permitted activity (including operation of any vessels or aircraft essential to conduct of the activity);
   b. Individuals included as backup for those personnel essential to the conduct of the permitted activity; and
   c. Individuals included for training purposes.

4. Persons who require state or Federal licenses to conduct activities authorized under the permit (*e.g.*, veterinarians, pilots) must be duly licensed when undertaking such activities.

5. Permitted activities may be conducted aboard vessels or aircraft, or in cooperation with individuals or organizations, engaged in commercial activities, provided the commercial activities are not conducted simultaneously with the permitted activities, except with written approval pursuant to Condition B.4 or as specifically provided for in an Incidental Take Statement or Incidental Take Permit for the specific commercial activity.

6. The Permit Holder may request authorization from the Chief, Permits Division to add personnel to this permit as indicated below. The Permit Holder cannot require or receive any direct or indirect compensation in return for requesting authorization for such person to act as a PI, CI, or RA under the permit.

   a. The Permit Holder or PI may add or remove CIs from the permit by submitting a written request to the Chief, Permits Division. Where the Permit Holder is an institution/facility, the Responsible Party may request a change of PI. Requests to change the PI or add CIs must include a description of the individual's qualifications to conduct and oversee the activities authorized under this permit.

      The Permit Holder or PI may designate additional CIs provided that a copy of the letter designating the individual, and a copy of the individual's curriculum vitae, is provided to the Permits Division by facsimile on the day of designation and confirmed by mail. The Responsible Party may request a change of PI by submitting a written request for personnel change to the Chief, Permits Division. The request must include a description of the individual's qualifications to conduct and oversee the activities authorized under this permit.

   b. The Permit Holder must request written approval from the Permits Division for additional RAs. The Permit Holder must also provide the names of all RAs to the NMFS Regional Administrator at the address indicated in Condition F.1.

D. <u>Possession of Permit</u>

1. This permit cannot be transferred or assigned to any other person.

2. The Permit Holder and all other persons operating under the authority of this permit must possess a copy of this permit: when engaged in a permitted activity; when a protected species is in transit incidental to a permitted activity; and during any other time when any protected species taken or imported under such permit is in the possession of such persons.

3. A duplicate copy of this permit must be attached to the container, package, enclosure, or other means of containment in which a protected species or protected species part is placed for purposes of storage, transit, supervision or care.

E. <u>Reports</u>

1. The Permit Holder must submit annual, final, and incident reports, and any papers or publications resulting from the research authorized herein to the Chief, Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Suite 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 427-2521.

2. *Written incident reports related to serious injury and mortality events or to exceeding authorized takes, must be submitted to the Chief, Permits Division within two weeks of the incident. The incident report must include a complete description of the events and identification of steps that will be taken to reduce the potential for additional research-related mortality or exceedence of authorized take.*

3. An annual report must be submitted to the Chief, Permits Division by [insert date here and at top of first page] for each year the permit is valid. The annual report describing activities conducted during the previous permit year must follow the format in Appendix 3.

4. A final report must be submitted to the Chief, Permits Division within 180 days after expiration of the permit (insert date 180 days post expiration), or, if the research concludes prior to permit expiration, within 180 days of completion of the research. The final report must follow the format in Appendix 3.

5. Research results must be published or otherwise made available to the scientific community in a reasonable period of time.

F. Notification and Coordination

1. The Permit Holder must provide written notification of planned field work to the appropriate Assistant Regional Administrator(s) for Protected Resources at the address(es) listed below. Such notification must be made at least two weeks prior to initiation of any field trip/season and must include the locations of the intended field study and/or survey routes, estimated dates of research, and names and roles of participants (*i.e.*, all CIs and Research Assistants).

   Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907) 586-7235; fax (907) 586-7012;

   Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115-0700; phone (206) 526-6150; fax (206) 526-6426;

   Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4020; fax (562) 980-4027;

   Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700; phone (808) 973-2935; fax (808) 973-2941;

   Southeast Region, NMFS, 263 13th Ave South , St. Petersburg, FL 33701; phone (727) 824-5312; fax (727) 824-5309; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298; phone (978) 281-9300; fax (987) 281-9394.

2. To the maximum extent practical, the Permit Holder must coordinate permitted activities with activities of other Permit Holders conducting the same or similar activities on the same species, in the same locations, or at the same times of year to avoid unnecessary disturbance of animals. The appropriate Regional Office may be contacted at the address listed above for information about coordinating with other Permit Holders.

G. Observers and Inspections

1. NMFS may review activities conducted pursuant to this permit. At the request of NMFS, the Permit Holder must cooperate with any such review by:

   a. Allowing any employee of NOAA or any other person designated by the Director, NMFS Office of Protected Resources to observe permitted activities; and

   b. Providing any documents or other information relating to the permitted activities.

H. Modification, Suspension, and Revocation

1. All permits are subject to suspension, revocation, modification, and denial in accordance with the provisions of subpart D [Permit Sanctions and Denials] of 15 CFR part 904.

2. The Director, NMFS Office of Protected Resources may modify, suspend, or revoke this permit in whole or in part:

   a. In order to make the permit consistent with any change made after the date of permit issuance with respect to any applicable regulation prescribed under section 103 of the MMPA and section 4 of the ESA;

   b. In any case in which a violation of the terms and conditions of the permit is found;

   c. In response to a written request[5] from the Permit Holder;

   d. If NMFS determines that the application or other information pertaining to the permitted activities (including, but not limited to, reports pursuant to Section E of this permit and information provided to NOAA personnel pursuant to Section G of this permit) includes false information; and

[5] The Permit Holder may request changes to the permit related to: the objectives or purposes of the permitted activities; the species or number of animals taken; and the location, time, or manner of taking or importing protected species. Such requests must be submitted in writing to the Chief, Permits Division in the format specified in the application instructions.

e. If NMFS determines that the authorized activities will operate to the disadvantage of threatened or endangered species or are otherwise no longer consistent with the purposes and policy in Section 2 of the ESA.

3. Issuance of this permit does not guarantee or imply that NMFS will issue or approve subsequent permits or amendments for the same or similar activities requested by the Permit Holder, including those of a continuing nature.

I. Penalties and Permit Sanctions

1. Any person who violates any provision of this permit, the MMPA, ESA, or the regulations at 50 CFR 216 and 50 CFR 222-226 is subject to civil and criminal penalties, permit sanctions, and forfeiture as authorized under the MMPA, ESA, and 15 CFR part 904.

2. NMFS shall be the sole arbiter of whether a given activity is within the scope and bounds of the authorization granted in this permit. The Permit Holder must contact the Permits Division for verification before conducting the activity if they are unsure whether an activity is within the scope of the permit. Failure to verify, where NMFS subsequently determines that an activity was outside the scope of the permit, may be used as evidence of a violation of the permit, the MMPA, the ESA, and applicable regulations in any enforcement actions.

J. Acceptance of Permit

1. In signing this permit, the Permit Holder and Principal Investigator:

a. Agrees to abide by all terms and conditions set forth in the permit, all restrictions and relevant regulations under 50 CFR Parts 216, and 222-226, and all restrictions and requirements under the MMPA, and the ESA;

b. Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director; and

c. Acknowledges that this permit does not relieve the Permit Holder of the responsibility to obtain any other permits, or comply with any other Federal, State, local, or international laws or regulations.

_____ _____

James H. Lecky Date
Director, Office of Protected Resources
National Marine Fisheries Service

_____ _____

[name of Permit Holder or Responsible Party] Date
[permit holder's/RP's title and institution]
Permit Holder/Responsible Party

_____ _____

[name of Principal Investigator] Date
[PI's title and institution]
Principal Investigator

Appendix 1: Tables Specifying the Kind(s) of Protected Species, Location(s), and Manner of Taking

Attachment 1: Requirements for disposition of biological samples

Appendix 2: Format for submitting annual and final reports

Grant Process

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ACRONYMS AND ABBREVIATIONS

CFR	Code of Federal Regulations
EA	Environmental Assessment
EIS	Environmental Impact Statement
ESA	Endangered Species Act
IACUC	Intitutional Animal Care and Use Committee
MMPA	Marine Mammal Protection Act
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
NFS	Northern fur seal
SSL	Steller sea lion
U.S.C.	United States Code

Grant Application Process Summary

NMFS administers a broad range of financial assistance and program partnership activities directed at supporting the core mission of National Marine Fisheries Service (NMFS). Grant programs are competitive and awards are made to universities, state agencies, and public or private sector non-profit organizations to fund activities pertaining to the research and management of fisheries, marine mammals, and habitat conservation. Some grant awards are discretionary, based upon compliance with existing defined NMFS program goals and objectives. Other grant awards are directed by Congress, with grant funds "earmarked" in the federal budget for specific activities.

Funding for research activities on Steller sea lions (SSLs) and northern fur seals (NFSs) has been derived from a variety of sources over the years, including federal, state, and private institutions. Prior to their listing under the Endangered Species Act (ESA) in 1990 and for most of the 1990s, federal funding for SSL research through NMFS was less than 1 million dollars per year, with a majority of funds supporting census work (Ferrero and Fritz 2002). As the population continued to decline into the late 1990s, a series of legal and scientific challenges led NMFS to place restrictions on the commercial fishing industry to help alleviate the population decline even though there was no scientific consensus on how effective such restrictions would be as conservation measures. In response, the U.S. Congress dramatically increased funding for SSL research in 2001 and directed NMFS to disburse funds for a diversity of research projects through several research agencies plus a new federal grants program, the Steller Sea Lion Research Initiative, administered through NMFS Alaska Region Office in Juneau (Ferrero and Fritz 2002).

Detailed instructive information for grant program application from NMFS is available on the National Oceanic and Atmospheric Administration (NOAA) Grants Program website: http://www.ago.noaa.gov/grants/pdf/. This site includes links to numerous forms that may be applicable to different research projects. Additional information on the types of research grants that are currently available can also be found on the Alaska Region Grants Office website: http://www.fakr.noaa.gov/omi/grants/

Grant programs affected by this EIS that are currently administered by NMFS and NOAA include:

- Regional Fishery Management Councils
- Unallied Science Program
- Marine Mammal Data Program
- Marine Mammal Health and Stranding Response Program (NMFS 2005d, NMFS 2006c)

Announcement of Federal Funding Opportunity

When funds become available for research on marine mammals NMFS, NOAA, and the Department of Commerce publicly announce federal funding opportunities for to marine mammal research. At a minimum, each funding opportunity announcement includes information detailing the following:

- Program Objectives
- Program Priorities
- Funding Availability
- Project/Award Period
- Permits and Approvals
- Eligible Applicants
- Cost Sharing or Matching Requirements
- Application and Submission Requirements
- Application Review Information
- Award Administration Information

Each grant program has specific program objectives and priorities that determine the types of research that will be granted funding. Priorities are typically categorized by national and regional priorities, with regional priorities further sorted by northeast, northwest, southeast, southwest, Pacific Islands, and Alaska regions if appropriate for the program.

A grant program announcement discloses the total amount of funding available for distribution, individual grant amount maximums, and details explaining the maximum duration of projects considered. All federal, state, and local government permits and approvals for research are the responsibility of the applicant. In most cases, the applicant is required to include in the proposal package either: 1) an application cover letter from the applicant to the authorizing entity requesting permits or approvals, or 2) a copy of the final permit or approval. Specifically, if the research activities the applicant is requesting funding for are within the jurisdiction of a facility's Institutional Animal Care and Use Committee (IACUC), the applicant must have requested or obtained approval from IACUC prior to application for funding as required by the Animal Welfare Act, 9 Code of Federal Regulations (CFR) 2.30-2.31. If proposed activities involve intrusive research (50 CFR 216.27(c)(6)) or if animals must be held after rehabilitation has been completed, the applicant must also obtain a Marine Mammal Protection Act (MMPA)/ESA scientific research and enhancement permit prior to submitting the funding proposal. The announcement will typically remind the applicant of possible permits and authorizations; however, it is the applicant's responsibility to comply with applicable laws and regulations.

All proposals for federal assistance through NOAA or NMFS are subject to governing regulations detailed in the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq*.). NEPA requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must either prepare a detailed statement (known as an Environmental Assessment (EA) or Environmental Impact Statement (EIS) or classify the action as categorically excluded from the requirements of NEPA. A Categorical Exclusion (CE) is defined as:

> *a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to*

> *have no such effect in procedures adopted by a Federal agency in adoption of these procedures (Section 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required* (40 CFR 1508.4).

All grant proposals are reviewed using the Grants NEPA Checklist (Attachment A). This checklist assists the NMFS responsible program managers in determining if the proposed grant(s) qualifies for categorical exclusion under NEPA. In many cases, grants qualify for a CE from NEPA requirements; however, some grant proposals may require the preparation of an EA or EIS. An EA or EIS are prepared when 1) a grant program is new; 2) proposed actions may have a significant environmental impact; or 3) potential impacts associated with the grant are highly controversial. Applicants will be requested to assist in the preparation of an EA or EIS by providing all necessary information to complete the assessment. Failure to obtain permits, approvals, letters of agreement, or failure to provide environmental analyses where necessary will delay in the award of funds.

All grant programs require that proposals must be received by the published due date or they will not be considered for funding. Required forms differ based on the grant program and type of proposal and a grant program announcement will outline which forms are required. At a minimum, the applicant will need to complete the Application for Federal Assistance: SF-424 (Attachment B), and Certifications Regarding Debarment, Suspension, and other Responsibility Matters: Drug Free Workplace Environment: CD-511 (Attachment C). Similarly, the content and form of application will vary depending on the grant program. However, all grant programs require that proposals:

- should be submitted online through the grants.gov website
- must adhere to the provisions and requirements set forth in the announcement of federal funding opportunity
- must include total project costs and a budget narrative, project summary, project description, organizational summary
- must include supporting documentation that illustrates:
    - proof of eligibility
    - necessary permits and authorizations
    - any applicable completed environmental analyses
    - results of previous grant awards
    - abbreviated Curriculum Vitae for all named investigators
    - letters of cooperation from all named co-investigators and cooperators
    - IRS documentation if applying as a 501(c)(3) organization
    - indirect cost rate agreement
    - any other required federal forms

A grant program announcement will also disclose the application review information including evaluation criteria, the review and selection process, and selection factors. Evaluation criteria are weighted and often require five key components be established in a proposal including:

- The importance and/or relevance and applicability of the proposed project to the grant program goals
- Technical and scientific merit
- Overall qualifications of the applicants
- Project costs

- Outreach and education

The review and selection process typically occurs in four steps including initial screening, peer review, merit review, and final selection by the selecting official (i.e. Director, NMFS Office of Protected Resources). The initial technical evaluation of the applicants ensures that the proposals relate to the grant program requirements and goals, funding priorities, and applicants meet eligibility requirements. Next, each proposal undergoes a peer review of at least three individuals. Peer reviewers are asked to evaluate proposals based on grant program goals or funding priorities identified by the applicant and the review criteria. After this step in the evaluation process, a merit review is completed. Merit reviewers use peer review comments, application materials, other applicable information, and the number of applications received in making recommendations regarding equitable distribution of funds among regions in order to rank proposals for funding. The selecting official makes the final decision about which proposals will receive funding based on recommendations from the merit review team, as well as policy considerations such as costs, geographical distribution, financial need, duplication with other federally funded projects, and equitable distribution of funds among the regions.

Award notices are the final step in the application process. The exact amount of funding, scope of work, and terms and conditions of a successful award are determined in pre-award negotiations between the applicant and NOAA/NMFS representatives. Awardees are responsible for the terms and conditions set forth in the final award letter and must remain in good standing to be eligible for distribution of funds and future funding.

REFERENCES

Ferrero, R.C. and L.W. Fritz (2002). Steller Sea Lion Research and Coordination: A Brief History and Summary of Recent Progress. NOAA Technical Memorandum NMFS-AFSC-129. NOAA Fisheries Service and Alaska Fisheries Science Center. Seattle, WA.

NMFS (2005d) for "National Marine Fisheries Service (NMFS). 2005. National Marine Fisheries Service Alaska Region Grants Program – Themes for NEPA Compliance. Prepared by Entrix, Inc. Anchorage, Alaska. "

NMFS (2006c) for "NMFS. 2006 Prescott Grant FAQs. Retrieved December 10 from: http://www.nmfs.noaa.gov/pr/health/prescott/proposals/faqs.htm."

Attachment A

Categorical Exclusion Checklist for
NOAA/NMFS Grants

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Categorical Exclusion Checklist for
National Oceanic and Atmospheric Administration
National Marine Fisheries Service Grants

The purpose of this checklist is to assist National Marine Fisheries Service (NMFS) responsible program managers (RPMs) in determining if the grant(s) they are proposing qualifies for categorical exclusion status under NOAA's National Environmental Policy Act (NEPA) guidelines. Normally, NMFS grants qualify for categorical exclusion from NEPA requirements when the environmental effects are minor or negligible. However, as stated in NOAA's guidelines for implementing NEPA (NAO 216-6; http://www.rdc.noaa.gov/~nao/216-6.html) at 5.05.c, under certain conditions, preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required for proposed grants when 1) a grant program is entirely new; 2) under extraordinary circumstances in which normally excluded actions may have a significant environmental impact; or 3) potential impacts associated with the grant are highly controversial. By answering the questions in this checklist, the RPM can determine whether the effects of the grant qualify for categorical exclusion, or require further NEPA documentation in the form of an EA or an EIS. This checklist should be filled out for a grant which is not automatically determined to require an EA or EIS in order to establish compliance with administrative record requirements regarding categorical exclusions (CEs).

---

1. Identify the NMFS Grant Project and Program:_____

   _____.

2. Attach a brief, but specific project description, including: the grant/award recipient, geographical location, and the scope of project(s). Does the grant involve any federal permits, or other federal agency direct involvement, activity, oversight, or funding? Yes ( ) No ( )

3. Is this an entirely new NMFS grant program? Yes ( ) No ( )

4. Will this NMFS grant establish a precedent or represent a decision in principle about future grant and award actions with potentially significant environmental effects? Yes ( ) No ( )

5. Have a number of similar grant actions been considered? Yes ( ) No ( )

   If yes, although the proposed action's effects may be individually insignificant, will its addition to existing and reasonably foreseeable actions result in cumulatively significant impacts? Yes ( ) No ( )

6. Could this NMFS grant have significant effects on public health or safety? Yes ( ) No ( )

Will the proposed action:

- Create high levels of noise for an extended period of time? Yes ( ) No ( )

- Have long or short term aesthetic effects, e.g., visual effects or effects on scenery? Yes ( ) No ( )

- Require large amounts of outdoor lighting or create any unusual odors? Yes ( ) No ( )

- Require large amounts of water or electricity for an extended period or time? Yes ( ) No ( )

- Have long or short term effects on the transportation infrastructure, or create a significant increase in local traffic? Yes ( ) No ( )

7. Could this NMFS grant have significant adverse impacts on any geographic area(s) with unique characteristics? Areas to consider include coral reefs, marine protected areas, marine sanctuaries, essential fish habitat, historic or cultural resources, park or refuge lands, wild or scenic rivers, wetlands, or ecologically significant or critical areas, including those listed on the National Register of Natural Landmarks, or listed or eligible for listing on the National Register of Historic Places. Yes ( ) No ( )

Will the proposed action:

- Degrade or disturb coral reefs? Yes ( ) No ( )

- Degrade or disturb previously undisturbed areas? Yes ( ) No ( )

- Affect any areas such as wetlands and flood plains? Yes ( ) No ( )

- Disturb archaeological or historic resources? Yes ( ) No ( )

8. Could this NMFS grant have highly uncertain and potentially significant environmental effects or involve unique or unknown risks? Yes ( ) No ( )

Will the proposed action:

- Potentially result in the introduction or spread of a nonindigenous species? Yes ( ) No ( )

- Involve aquaculture activities that could result in the introduction or spread of invasive or non-indigenous species? Yes ( ) No ( )
- Significantly impact water resources such as surface or groundwater? Yes ( ) No ( )

- Significantly contribute to water degradation or impairment? Yes ( ) No ( )

- Generate large amounts of hazardous waste or any toxic waste? Yes ( ) No ( )

- Emit dangerous levels of ionizing or nonionizing radiation? Yes ( ) No ( )

- Result (directly or indirectly) in the generation of large amounts of air pollution? Yes ( ) No ( )

9. Could this NMFS grant have adverse effects on species listed or proposed to be listed as Endangered or Threatened, or have adverse effects on designated critical habitats? Yes ( ) No ( )

10. Will this grant threaten to violate a Federal state, local, or tribal law imposed for the protection of the environment? Yes ( ) No ( )

11. Will this NMFS grant have highly controversial environmental effects (i.e, are the effects likely to be subject to serious scientific dispute)? Yes ( ) No ( )

IF YES WAS CHECKED FOR ANY OF THE ITEMS ABOVE: Please list the item number, provide additional information about anticipated effects, and contact the NEPA Coordinator at NOAA's Office of Strategic Planning (202- 482-5181) as soon as possible to discuss alternatives for providing NEPA documentation.

IF NO WAS CHECKED FOR ALL OF THE ITEMS ABOVE: The grant activity may qualify for a Categorical Exclusion (CE). Please review the categories for CEs below and select the applicable category. If none apply, or if you have any questions about the applicability of the CE, please contact the NEPA Coordinator in the Office of Strategic Planning, (202) 482-5181.

APPLICABLE? YES/NO	CATEGORY	DESCRIPTION
	Research NAO 216-6 6.03.c.3(a)	Programs or projects of limited size and magnitude or with only short-term effects on the environment and for which any cumulative effects are negligible. Examples include natural resource inventories and environmental monitoring programs conducted with a variety of gear (satellite and ground based sensors, fish nets, etc.) in water, air, or land environs. Such projects may be conducted in a wide geographic area without need for an environmental document provided related environmental consequences are limited or short-term.
	Financial and Planning Grants NAO 216-6 6.03.c.3(b)	Financial support services and programs, such as federal or state loans or grants, (e.g., Saltsonstall-Kennedy grant, a fishery loan or grant disbursement under the Fishermen's Contingency Fund or Fisheries Obligation Guarantee Program), where the environmental effects are minor or negligible, and no environmental consequences are anticipated beyond those already analyzed in establishing such programs, laws or regulations. New financial support services and programs should undergo an environmental analysis at the time of conception to determine if a CE could apply to subsequent actions.

	Minor Project Activities NAO 216-6 6.03.c.3(c)	Projects where the proposal is for a minor amelioration action such as planting dune grass or for minor project changes or minor improvements to an existing site (e.g., fences, roads, picnic facilities, etc.), unless the project's impacts in conjunction with past, present or reasonably foreseeable future actions may result in a significant impact the human environment (40 CFR 1508.7).
	Pre-Proposal Actions 40 CFR 1508.23	Planning actions before a proposal exists do not require NEPA analysis. A "proposal" exists at that stage in the development of an action when a NOAA organization has a goal and begins its decision-making process, including consideration of environmental impacts, toward realization of that goal.
	Administrative or Programmatic Functions NAO 216-6 6.03.c.3(d)	The following NOAA programmatic functions that hold no potential for significant environmental impacts qualify for a CE: • Program planning and budgeting • Mapping, charting and surveying services • Ship support, ship and aircraft operations • Fishery financial support services • Grants for fishery data collection activities • Basic and applied research and research grants, except as provided in Section 6.03.b of NAO 216-6 • Enforcement operations • Basic environmental services and monitoring, such as weather observations, communications, analyses, and predictions • Environmental satellite services • Environmental data and information services • Air quality observations and analysis • Support of national and international atmospheric and Great Lakes research programs • Executive direction • Administrative services • Administrative support advisory bodies
	Regulations Implementing Projects or Plans NAO 216-6 6.03.c.3(i)	Routine operations and routine maintenance, preparation of regulations, Orders, manuals, or other guidance that implement, but do not substantially change these documents, or other guidance; policy directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature, or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case; activities which are educational, informational, advisory or consultative to other agencies, public and private entities, visitors, individuals or the general public; actions with short term effects, or actions of limited size or magnitude.

	Listing Actions Under Sec. 4(a) of ESA NAO 216-6 6.03.e.3	The following actions may be appropriate for CE: • Preparation of recovery plans pursuant to Section 4(f)(1), because such plans are only advisory documents that provide consultative and technical assistance in recovery planning. However, implementation of specific tasks themselves identified in recovery plans may require an EA or EIS depending on the significance of the action (see NAO 216-6 Section 6.03e.2(b) for guidance on NEPA compliance for implementation of recovery actions). • Permits for scientific research or to enhance the propagation or survival of listed species pursuant to Section 10(a)(1)(a) of the ESA (except for permits covered in NAO 6.03e.2(c)). The RPM must also consider the cumulative impact on the listed species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species. • Critical habitat designations where a designation overlaps with listing protections and is unlikely to have a significant effect on the human environment. CEs will not apply for critical habitat designations that include habitat outside the current occupied range of a listed species, the potential for economic and/or other impacts over and above those resulting from the listing exists. • "Low effect" incidental take permits under Section 10(a)(1)(B) of ESA that individually or cumulatively have a minor or negligible effect on the species covered in the habitat conservation plan.
	MMPA NAO 216-6 6.03.f.2	In general, scientific research, enhancement, photography, and public display permits issued under Section 101(a)(1) and 104 of the MMPA, and letters of confirmation for activities conducted under the General Authorization for Scientific Research established under Section 104 of the MMPA qualify for a CE. The RPM must also consider the cumulative impact on the protected species from the total amount of permits issued with CEs, and take into account any population shifts with the subject species. Small take incidental harassment authorizations under Section 101(a)(5)(d), tiered from a programmatic environmental review, are categorically excluded from further review. If such an authorization does not tier from a programmatic environmental review, that action may require an EIS, EA, or CE, based on a case-by-case review.

	Restoration Actions NAO 216-6 6.03.b.2	Restoration actions that do not individually or cumulatively have significant impacts on the human environment (e.g., actions with limited degree, geographic extent, and duration) may be eligible for CE (40 CFR 1508.4), provided such actions meet all of the following criteria: • Are intended to restore an ecosystem, habitat, biotic community, or population of living resources to a determinable pre-impact condition; • Use for transplant only organisms currently or formerly present at the site or in its immediate vicinity; • Do not require substantial dredging, excavation, or placement of fill; and • Do not involve a significant added risk of human or environmental exposure to toxic or hazardous substances.
	NAO 216-6 6.03.b.3	Examples of restoration actions likely to meet all of the above criteria include: • On-site, in-kind restoration actions in response to a specific injury (e.g., revegetation of habitats or topographic features such as restoration of seagrass meadows, salt marshes, or wetland areas; restoration of submerged, riparian intertidal or wetland substrates; replacement or restoration of shellfish beds through transplant or restocking; or structural or biological repair or restoration of coral reefs • Actions to restore historic habitat hydrology, where increased risk of flood or adverse fishery impacts are not significant (e.g., restoration, rehabilitation, or repair of fish passageways or spawning areas; restoration of tidal or non-tidal wetland inundation • Actions to enhance the natural recovery processes of living resources or systems affected by anthropogenic impact (e.g., use of exclusion methods such as fencing to protect stream corridors, riparian areas or other sensitive habitat; actions to stabilize dunes, marsh edges, or other mobile shoreline features

	Fisheries Management Plans and Plan Amendments NAO 216-6 6.03.d.4	Fisheries management actions may qualify for a CE pursuant to Section 9.03a.3. of NAO 216-6 if the actions individually and cumulatively do not have the potential to pose significant effect to the quality of the human environment. Actions that may receive a CE include: • Ongoing or recurring fisheries actions of a routine administrative nature when the action will not have any impacts not already assessed or the RPM finds they do not have the potential to pose significant effects to the quality of the human environment such as: reallocations of yield within the scope of a previously published fisheries management plan (FMP), or fishery regulation, combining management units in related FMP, and extension or change of the period of effectiveness of an FMP or regulation; and • Minor technical additions, corrections, or changes to an FMP. CE determinations for FMPs and FMP amendments require specific documentation. Refer to NAO 216-6 at 6.03c.3d.4 for further instructions.

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Attachment B

Application for Federal Assistance: SF-424

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APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application	Pre-application	**3. DATE RECEIVED BY STATE**	State Application Identifier
☐ **Construction** ☐ **Non-Construction**	☐ **Construction** ☐ **Non-Construction**	**4. DATE RECEIVED BY FEDERAL AGENCY**	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:		**Organizational Unit**:	
		Department:	
Organizational DUNS:		Division:	
Address:		**Name and telephone number of person to be contacted on matters involving this application (give area code)**	
Street:		Prefix:	First Name:
City:		Middle Name	
County:		Last Name	
State:	Zip Code	Suffix:	
Country:		Email:	
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐-☐☐☐☐☐☐☐		Phone Number (give area code)	Fax Number (give area code)

8. TYPE OF APPLICATION: ☐ **New** ☐ **Continuation** ☐ **Revision** If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:	

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date:	Ending Date:	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:	
b. Applicant	$ .00		
c. State	$ .00		
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372	
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**	
g. TOTAL	$ .00	☐ Yes If "Yes" attach an explanation.	☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative		
Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

Reset Form

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

SF-424 (Rev. 7-97) Back

Attachment C

Certifications Regarding Debarment, Suspension and Other Responsibility Matters: Drug Free Workplace: CD-511

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FORM **CD-511**
(7-91)

UNITED STATES DEPARTMENT OF COMMERCE

CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS AND LOBBYING

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and "Governmentwide Requirements for Drug-Free Workplace" and 15 CFR Part 28, "New Restrictions on Lobbying." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant, or cooperative agreement.

1. DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, for prospective participants in primary covered transactions, as defined at 15 CFR Part 26, Sections 26.105 and 26.110 -

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

---

2. DRUG-FREE WORKPLACE REQUIREMENTS
Alternate I. Grantees Other Than Individuals

As required by the Drug-Free Workplace Act of 1988, and implemented at 15 CFR Part 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610 -

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will--

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

ADMINISTRATION/PSG ELECTRONIC FORM

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, state, ZIP code):

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. Grantees Who Are Individuals

As required by the Drug-Free Workplace Act of 1988, and implemented at 15 CFR 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610 -

(A) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(B) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

3. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over $100,000, or loan or loan guarantee over $150,000, as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

NAME OF APPLICANT	AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

FORM CD-511 (7-91)

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