



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, MD 20910

SEP 10 2015

To: National Marine Fisheries Service Permit Holders, Principal Investigators, and Primary Contacts of Permits and Letters of Confirmation (LOC) under the Marine Mammal Protection Act (MMPA) and/or Endangered Species Act (ESA)

From: Donna S. Wieting *Donna S. Wieting*
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Subject: Requirements for Research using Small Unmanned Aircraft Systems (UAS)

We want to make sure you are aware of additional Federal requirements regarding small unmanned aircraft systems (UAS) operations, which may affect your permitted research activities. We encourage you to share this information with all Co-investigators listed on your permit, so they are aware and can assist in complying with these requirements.

At this time, Congress and the Federal Aviation Administration (FAA) consider all UAS as "aircraft," subjecting their operation to Federal law.^{1,2} Federal requirements for operating a UAS depend largely on the use of the UAS:

- Civil (non-governmental/commercial),
- Public (governmental), and
- Model Aircraft (recreational/hobby only).

The FAA considers scientific research as either **Civil** or **Public** depending on the individual and/or purpose of operating the device. It does not fall under the recreational/hobbyist category. Please note that a vast majority of our permit holders will fall under Civil operators.

If you are a **Public** unmanned aircraft operator: contact the FAA to register the UAS and to apply for a certificate of waiver or authorization (COA) to operate the UAS for a specific activity.

If you are a **Civil** unmanned aircraft operator: contact the FAA to determine registration and certification requirements. Civil UAS operators may apply for a "Section 333 exemption" from the requirement to obtain an airworthiness certificate and then apply for a civil COA.

¹ Congress' definition of model aircraft is consistent with the FAA's existing definition of aircraft as "any contrivance invented, used, or designed to navigate, or fly in, the air." 49 U.S.C. 40102; *see also* 14 CFR 1.1.

² On February 14, 2012, President Obama signed into law the FAA Modernization and Reform Act of 2012 (Pub. L. 112-95), which established, in Section 336, a "special rule for model aircraft" and confirmed the FAA's long-standing position that model aircraft are aircraft.



Please note that we can process and issue permits for takes associated with research involving UAS without the FAA permit(s) in place. However, our permit regulations require that individuals who need State and/or Federal licenses to conduct activities authorized under an MMPA and/or ESA permit (*e.g.*, veterinarians, pilots) must be properly licensed when undertaking such activities.³ Therefore, your NMFS permit requires that you obtain any applicable FAA permit, certification, and/or license required for use of UAS.

NMFS will continue to evaluate the potential impacts of UAS on protected species, even as the FAA is developing new regulations. To facilitate better understanding of the requirements and expectations, the NMFS Office of Protected Resources has launched two new web sites, which offer additional information on this complex and evolving issue:

- Permitting and UAS: <http://www.nmfs.noaa.gov/pr/permits/uas.html>
- Responsible UAS operations around marine protected species: <http://www.nmfs.noaa.gov/pr/uas.html>

Please note this memorandum does not constitute official legal guidance on FAA requirements regarding UAS generally or your specific operation of a UAS; these requirements are likely to change. For example, the FAA recently published a proposed rule to govern operation of small UAS for non-hobby or non-recreational purposes. We strongly recommend that you refer to the FAA for the most up-to-date information; you may contact them with any questions or concerns about using and permitting UAS: <https://www.faa.gov/uas/>

If you have specific questions related to your permit/LOC, please contact your analyst at 301-427-8401.

³ For MMPA permit regulations: 50 CFR 216.35(h); and ESA permit regulations: 50 CFR 222.308(c)(11).