

# **federal register**

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## **Part III**

### **Department of Commerce**

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**National Oceanic and Atmospheric  
Administration**

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**50 CFR Parts 215 and 216  
General Authorization for Scientific  
Research; Final Rule**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

50 CFR Parts 215 and 216

[Docket No. 940840-4262; I.D. 081694C]

RIN 0648-AH20

## General Authorization for Scientific Research

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

ACTION: Interim final rule; request for comments.

**SUMMARY:** This interim final rule implements recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) by amending the regulations implementing the MMPA to authorize, pursuant to a General Authorization for Scientific Research, the harassment of marine mammals in the wild for purposes of bona fide scientific research, that does not have the potential to injure marine mammals (Level B harassment).

**DATES:** The interim rule is effective on October 3, 1994. Comments must be postmarked or received by November 17, 1994.

**ADDRESSES:** Comments or requests for the Environmental Assessment (EA) prepared for this action should be sent to Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910-3226. Comments regarding the burden-hour estimate or any other aspect of the collection-of-information requirement contained in this rule should be sent to Ann D. Terbush at the above address and to the Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Ann D. Terbush, (301) 713-2289.

**SUPPLEMENTARY INFORMATION:****General Background and Statutory Information**

## Marine Mammal Protection Act

The MMPA (18 U.S.C. 1381 *et seq.*) places a moratorium on the taking and importing of marine mammals by persons subject to US. jurisdiction with limited exceptions. One exception is for the taking or importing of marine mammals for purposes of scientific research, The MMPA Amendments of 1994 (1994 Amendments), enacted on April 30, 1994 (P.L. 103-238), among

other things, require that, within 120 days of enactment, NMFS issue a General Authorization for Scientific Research and implementing regulations allowing takings of marine mammals in the wild for purposes of bona fide scientific research by no more than Level B harassment (pursuit, torment, or annoyance of marine mammals that does not have the potential to injure marine mammals).

The 120-day deadline requires that this General Authorization be issued by interim final rule without prior notice and opportunity for prior public comment. Comments on the General Authorization and implementing regulations are invited and will be considered in issuing a final rule.

Level B harassment is defined as any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but does not have the potential to injure a marine mammal or marine mammal stock in the wild. Level A harassment is defined as any act which has the potential to injure a marine mammal or marine mammal stock in the wild. In general, except for small take authorizations for harassment under section 101(a)(5)(D) of the MMPA, a permit is required to take by Level A harassment. And, a permit is also required to hunt, capture, or kill marine mammals for the purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock, or to take by Level B harassment for photography for educational or commercial purposes.

**Fur Seal Act**

In proposed revised permit regulations published on October 14, 1993 (58 FR 53320), NMFS proposed consolidating three sets of permit regulations that have been implemented under the MMPA, the Fur Seal Act of 1966 (FSA) (16 U.S.C. 1151 *et seq.*), and the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*). This interim final rule revises the permit sections of the implementing regulations of the FSA (50 CFR part 215) to reference MMPA permit regulations (50 CFR part 216, subpart D) as the applicable regulations for the taking of North Pacific fur seals for scientific research or exhibition purposes. The FSA permit regulations are also revised to allow the taking of North Pacific fur seals involving only Level B harassment for the purpose of scientific research under this interim final rule. (Note:

North Pacific fur seals (Pribilof Island population) have been designated as depleted under the MMPA.)

**Collection of Certain Marine Mammal Parts**

In enacting the 1994 Amendments it was the apparent intent of Congress to allow under a General Authorization the conduct of scientific research activities involving certain low-impact types of taking of marine mammals in the wild, with the goal of making a permit unnecessary for scientific research involving types of taking that do not have the potential to injure marine mammals or marine mammal stocks. NMFS believes that such types of low-impact taking include the collection of tissues, fluids, or other marine mammal parts sloughed, excreted, or otherwise discharged naturally by marine mammals in the wild, where such collection may not necessarily involve the harassment of living marine mammals in the wild. Accordingly, NMFS is amending § 216.26 of the implementing regulations (50 CFR part 216) to allow for purposes of bona fide scientific research, without issuance of a permit, the collection of any tissues, fluids or other marine mammal parts naturally sloughed, excreted or otherwise discharged by a living marine mammal in the wild. Section 216.26 is also amended to: (1) Ensure that requirements for the registration, identification, transfer, or other possession of such marine mammal parts are consistent with those already established for parts salvaged from beached or stranded marine mammals (§ 216.22(c)); (2) require that, in registering such marine mammal parts, the person collecting the part must also state the scientific research purpose for which the part was collected; and (3) prohibit the sale or trade of any such marine mammal part for commercial purposes.

**Discussion of General Authorization and Implementing Regulations**

The implementing regulations for the General Authorization are organized into five parts: (1) The General Authorization and the types of activities covered; (2) letter of intent requirements; (3) procedures for confirming that the General Authorization applies or notifying the applicant that a permit is required; (4) the terms and conditions applicable to activities conducted under the General Authorization, including reporting requirements; and (5) the circumstances under which NMFS may suspend, revoke, or modify the authority to

conduct scientific research under the General Authorization.

### Scope

#### *Activities Included Under the General Authorization*

Research activities that are likely to involve only Level B harassment of marine mammals, and therefore that may be conducted under the General Authorization consistent with the requirements of these regulations, include: Photo-identification studies; behavioral observations; vessel surveys; and aerial surveys over water or land, and over pinniped rookeries if flown at altitudes greater than 1,000 ft (305 meters (m)). These activities are listed in § 216.45(a)(3). This list may be expanded as new information becomes available and NMFS determines that other types of research activities are likely to involve only Level B harassment. Comment is requested regarding what other types of research activities are likely to involve only Level B harassment (i.e., no potential to injure) and can be clearly and **uniquely** categorized as such in the final rule.

The General Authorization also applies to persons issued a scientific research permit **under** the ESA that authorizes the taking by Level B harassment of marine mammals listed as threatened or endangered. An ESA permit holder authorized to conduct Level B harassment is not required to submit a separate letter of intent. Such Level B activities are included **under** the MMPA General Authorization for Scientific Research and no letter of confirmation is needed.

#### *Activities Not Included Under the General Authorization*

As stated in section 2(b) of the 1994 Amendments, "Except as otherwise expressly provided, nothing in this Act is intended to amend, repeal, or otherwise affect any other provision of law." Thus, marine mammals listed as endangered or threatened **under** the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA (50 CFR part 222). And, except for Level B harassment, other types of taking of marine mammals listed as threatened or endangered that are authorized under an ESA permit for scientific research are not authorized under the General Authorization. Research activities involving the harassment of marine mammals in the wild that have the potential to injure a **marine** mammal (Level A harassment) are not covered by the General Authorization. They may be conducted

only pursuant to a scientific research permit. Likewise, activities that involve the hunting, capturing, or killing of marine mammals for the purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock, or taking by Level B harassment for photography for educational or commercial purposes, are not covered by the General Authorization and require a permit.

Although most population surveys are likely to involve only Level B harassment or no harassment at all, pinniped rookeries are an area of concern because many pinniped species stampede into the water when startled or otherwise threatened by a potential predator or by human activity. When a stampede occurs in a **haulout** area (in the non-reproductive season), it generally does not involve a potential injury, but in a rookery situation, a stampede has the potential to injure pups. The 1,000 ft (305 m) threshold for aerial surveys over pinniped rookeries serves as an objective standard that may be used to determine whether such research may be conducted under the General Authorization or may involve potential injury to marine mammals (i.e., Level A harassment) and, therefore, require a permit. In this regard, NMFS is interested in comments on whether different species-specific aerial survey altitudes or methods associated with minimal disturbance have been established definitively in the scientific literature.

In the interest of simplicity and predictability, the interim final rule limits research activities that may be conducted under the General Authorization to only those types listed in § 216.45(a)(3). In preparing this interim final rule, however, NMFS considered including provisions that would have allowed research activities other than those types listed in § 216.45(a)(3) to be included under the General Authorization; **Provided**, That in the letter of intent the applicant described the activity and furnished supporting documentation sufficient for NMFS to determine that the activity likely would involve only Level B harassment. For example, although bleach marking of pinnipeds in the wild is a type of research that could injure marine mammals (Level A harassment), if the activity is being conducted by an experienced researcher using only non-toxic bleaching agents and proven direct application methods on a species for which there is an established record of tolerance of such methods without any disturbance with potential to injure (e.g., Northern elephant seals, *Mirounga angustirostris*), NMFS, upon receipt of a

letter of intent containing sufficient documentation, could determine such activity likely would involve only Level B harassment and that the activity could be conducted under the General Authorization, NMFS is requesting comment on whether the final rule should include such flexibility; i.e., allow persons to conduct, under the General Authorization, a research activity that has not been listed in the regulations as a type of research likely to involve only Level B harassment, if sufficient documentation is submitted to NMFS to make a determination that the activity is bona fide scientific research and does not involve the potential to injure marine mammals or marine mammal stocks.

#### *Applicants*

An applicant submitting a letter of intent to conduct scientific research under the General Authorization must be the principal investigator, or the appropriate institution, government entity, or corporation responsible for the supervision of the principal investigator. If the research involves **co**-investigators, a single principal investigator, who will be primarily responsible for the research to be conducted under the General Authorization, must submit the letter of intent, with all co-investigators identified as such. Identification of both principal and co-investigators ensures accountability for activities conducted under the General Authorization.

All persons conducting an activity under the authority of the General Authorization must possess qualifications (e.g., education or experience) commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications. Applicants must enclose with the letter of intent, curricula vitae for themselves and any co-investigators that may conduct research activities under the General Authorization. NMFS will consider this information in determining whether the research as described in the letter of intent can be expected to be conducted in a manner involving no more than Level B harassment of marine mammals or marine mammal stocks.

#### *Letter of Intent*

Persons intending to conduct a scientific research activity of the type listed in § 216.45 (a)(3) under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, **F/PR1**, Office of Protected Resources, NMFS, 1335 East-

West Highway, Silver Spring, MD 20910-3226. Persons issued an **ESA** scientific research permit authorizing the take of marine mammals in the wild by Level B harassment, however, need not submit a letter of intent. Those Level B activities are covered by the General Authorization, and no letter of confirmation is needed.

All letters of intent must include the name, address, telephone number, qualifications, and experience of the applicant (i.e., principal investigator) and any co-investigator(s). Curricula vitae must be provided for each, including a list of publications by such investigator relevant to the objectives, methodology, or other aspects of the proposed research. Each letter of intent must be signed, dated, and include the certification statement specified at § 216.45(b)(3).

Each letter of intent must include brief statements responsive to the information requirements of section 104(c)(3)(C) of the MMPA: The species or stocks of marine mammals (**common** and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research: **the** geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.; the period(s) of time over which the research will be conducted (up to 5 years), including the field season(s) for the research, if applicable; the purpose of the research, including a description of how the proposed research **qualifies** as bona fide research; and the methods to be used to conduct the research.

#### **Confirmation Letter or Notification of Permit Requirement**

No later than 30 days after receipt of a letter of intent, NMFS will issue a letter to the applicant either: Confirming that the General Authorization applies, notifying the applicant that all or part of the proposed research does not **qualify** for the General Authorization and that a scientific research permit is required, or notifying the applicant that the letter of intent was insufficient to determine whether the General Authorization applies and identifying the deficiencies to enable the applicant to revise and resubmit the letter.

The Marine Mammal **Commission** (MMC) and Committee of Scientific Advisors were established under Title II of the MMPA to, among other things, review applications for permits for the taking or import of marine mammals and provide comment and recommendations to NMFS. Although the 1994 Amendments do not provide

for the involvement of either the MMC or the Committee of Scientific Advisors in the General Authorization for Scientific Research, a copy of each letter of intent and NMFS' response will be forwarded to the MMC. This will allow the MMC to review all research activities involving marine mammals, including research conducted under the General Authorization.

Any suspension, revocation, or modification of the authorization under the General Authorization will be conducted in accordance with 15 CFR part 904.

#### **Terms and Conditions**

##### **Monitoring and Coordination**

In order to ensure that research activities conducted under the General Authorization do not either individually or cumulatively result in takes other than by Level B harassment, NMFS plans to coordinate and monitor research activities. Monitoring will be accomplished, in part, through NMFS and MMC review of required annual reports. Coordination of research activities will be accomplished, in part, by requiring persons conducting research under the General Authorization to notify the appropriate NMFS Regional Office(s) at least 2 weeks before initiation of on-site activities. The Regional Office(s) will review these notifications and coordinate upcoming research to minimize adverse impacts on marine mammals in the wild. Where appropriate, Regional Offices may convene meetings to coordinate research under the General Authorization. In the event of any circumstance where research activities result in a taking which exceeds Level B harassment, for example, in the case of potential or actual injury to or death of a marine mammal or marine mammal stocks in the wild, research activities must be immediately discontinued and the principal investigator must notify NMFS. NMFS will determine whether: The research activity in question may continue under the General Authorization; revision of the research methodology is necessary to remove any potential to injure marine mammals or marine mammal stocks; or, a permit is necessary to continue the research. The reporting of such incidents is a condition of conducting research under the General Authorization. Similarly, in certain instances (e.g., reports of abuse of the General Authorization), it may be necessary for a NMFS observer to monitor research activities directly. Therefore, a condition of conducting research under the General

Authorization is that, upon notification, the principal investigator must allow a NMFS observer to observe research activities.

##### **Reporting Requirements**

Persons conducting research under the General Authorization must submit annual reports of activity. This information will be used to monitor the effects of the activities on individual animals and their populations, to assess possible cumulative impacts, and to determine whether the activity is being conducted as described in the letter of intent. Annual reports will also be used to track the progress of the research, to determine whether the research continues to meet the bona fide requirement, and to allow for coordination with similar research in the same area.

Photography (e.g., still photography, videotaping, and motion picture filming) often will be one of the methodologies employed by researchers engaged in scientific research under the General Authorization. Such photography does not require a photography permit issued under the MMPA provided the primary use of the resulting images will be for the conduct of the research or presenting or publishing the results. In such case, such images may be incidentally used for other scientific, educational, or commercial purposes provided the names of all photographers are disclosed in the annual report and any photographs, videotape, or film obtained during the conduct of research under the General Authorization are identified by a statement that refers to the General Authorization and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images. However, if the primary use of the images will be for educational or commercial use, a separate photography permit must first be obtained.

##### **Classification**

NMFS prepared an EA for this action and concluded that this interim final rule will not significantly affect the human environment. As a result, preparation of an Environmental Impact Statement on this action is not required by section 102(2) of the National Environmental policy Act or its implementing regulations. Copies of the EA are available on request (see ADDRESSES).

This interim final rule has been determined to be not significant for purposes of E.O. 12866.

Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act (APA), the Assistant Administrator for Fisheries, NOAA, (AA) finds there is a good cause to waive prior notice and opportunity to comment on this rule. It is contrary to public interest to provide prior notice and opportunity for comment because of the deadline for implementation mandated by the 1994

**Amendments.**

Pursuant to section 553(d) of the APA, the AA finds there is good cause to waive the required 30-day delay in the effective date. Any delay in this action would deny timely coverage by the General Authorization to qualified persons, This General Authorization grants an exception from the MMPA requirement to obtain a scientific research permit for the taking of marine mammals.

This interim final rule involves an existing collection-of-information requirement subject to the Paperwork Reduction Act that has been approved by OMB (control number 0648-0084). The burden for collection of that information was estimated to average 43 hours per response, including the time to complete permit applications, complete reporting requirements, and request subsequent modifications or authorizations. The public reporting burden for the collection-of-information associated with the General Authorization established under the current rule is estimated to average 17 hours per response. Send any comments regarding these burden estimates or any other aspect of these requirements, including suggestions for reducing the burden to NMFS and OMB (see ADDRESSES).

**List of Subjects**

**50 CFR Part 215**

Administrative practice and procedure, Marine mammals, Penalties, Pribilof Islands, Reporting and recordkeeping requirements.

**50 CFR Part 216**

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: September 27, 1994.

Gary Matlock,  
Program Management Officer, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR parts 215 and 216 are amended as follows:

**PART 215—PRIBILOF ISLANDS**

1. The authority citation for part 215 is revised to read as follows:

Authority: 16 U.S.C. 1151-1175, and 1361 *et seq.*

2. Section 215.1 is revised to read as follows:

**§ 215.1 Purpose and scope.**

The purpose of these regulations is to implement the provisions of the Fur Seal Act of 1966, as amended. These regulations apply to the administration of the Pribilof Islands; the take of fur seals; and permits for the take, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

3. Subpart B is revised to read as follows:

**Subpart B—Permits for Scientific Research and Public Display**

**§ 215.11 Permits for scientific research and public display purposes.**

In accordance with the provisions of part 216, subpart D, of this chapter, the Director, Office of Protected Resources, NMFS, may issue permits for the taking, transportation, importation, exportation, or possession of fur seals or their parts for scientific research or public display purposes, and may authorize Level B harassment (defined at § 216.3) of fur seals for scientific research purposes under the General Authorization for Scientific Research set forth at § 216.45.

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

4. The authority citation for part 216 continues to read as follows:

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

5. In § 216.3, the definition of "Act" is revised, and new definitions "Bona fide scientific research," "ESA," "FSA," "Level A harassment," "Level B harassment," and "MMPA" are added, in alphabetical order, to read as follows:

**§ 216.3 Definitions.**

\* \* \* \* \*

**Acts** means, collectively, the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

\* \* \* \* \*

**Bona fide scientific research:** (1) Means scientific research on marine

mammals conducted by qualified personnel, the results of which:

(i) Likely would be accepted for publication in a refereed scientific journal;

(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properlycurated, professionally accredited scientific collection); or

(iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

**ESA** means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

**FSA** means the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

**Level A Harassment** means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

**Level B Harassment** means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

**MMPA** means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

6. In part 216, all references to "the Act" are revised to read "MMPA" in the following places only.

Part/Sec.	Paragraph	Frequency
216	Table of Contents entry for 5216.14.	
216.2	.....	1
216.3	Introductory text	1
216.6	(a) .....	1
	(b) .....	1
	(d) .....	1
	(e) .....	3
216.7	(a) .....	1
	(b) .....	1
216.8	.....	5
216.12	(b)(1)(i) .....	1
216.13	(b) .....	1

Part/Sec.	Paragraph	Frequency
216.14	(c) .....	1
	Heading .....	1
	(a) Introductory text ...	2
216.15	(b)(1) .....	1
	Introductory text .....	1
216.21	.....	2
216.23	(d) .....	2
216.24	(b)(2)(vii) .....	2
	(b)(2)(viii) .....	1
	(b)(4) .....	1
	(c)(8) .....	1
	(d)(2)(i)(D) .....	3
	(d)(2)(vi) .....	2
	(e)(7) introductory text	1
	(e)(7)(ii) .....	1
	(g) .....	1
	(a) introductory text ...	1
216.31	(a)(10) .....	1
	(c) .....	2
216.70	(a) introductory text ...	1
	(a)(3) .....	1
216.72	.....	2
216.73	(b)(4) .....	1

7. In subpart B, § 216.16 is added to read as follows:

**§ 216.16 Prohibitions under the General Authorization for Level B harassment for scientific research.**

It shall be unlawful for any person to: (a) Provide false information in a letter of intent submitted pursuant to § 216.45(b);

(b) Violate any term or condition imposed pursuant to § 216.45(d).

6. In subpart C, paragraphs (b), (c), and (d) of § 216.26 are revised to read as follows:

**§ 216.26 Collection of certain marine mammal parts.**

(b) Any tissues, fluids or other marine mammal parts sloughed, excreted, or otherwise discharged naturally by a living marine mammal in the wild may be collected for purposes of bona fide scientific research, *Provided*, That such parts are not substances of significant commercial value, such as ambergris, and any such collection does not otherwise involve the taking of a living marine mammal in the wild except as authorized under other provisions of this part.

(c) Any marine mammal part collected under paragraphs (a) and (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with § 216.22(c). In registering a marine mammal part collected under paragraph (b) of this section, the person who collected the part must also state the scientific research purpose for which the part was collected.

(d) *No sale or commercial trade.* No person may sell or trade for commercial

purposes any marine mammal part collected under this section.

**§ 216.40 [Redesignated as § 216.50]**

9. Section 216.40 is redesignated as § 216.50 of subpart E.

10. In subpart D, § 216.45 is added to read as follows:

**§ 216.45 General Authorization for Level B harassment for scientific research.**

(a) *General Authorization.* (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in § 216.3, for purposes of bona fide scientific research *Provided*, That:

(i) They submit a letter of intent in accordance with the requirements of paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217-227, particularly at § 222.23 through § 222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) *Letter of intent.* Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified

return/receipt mail to the Chief, Permits Division, **F/PR1**, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910-3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in § 216.3; and

(vi) The **methods to be used** to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific

research on marine mammals in the wild under the General Authorization is a limited conditional authority, restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals [i.e., Level A harassment], may subject me to penalties under the MMPA and implementing regulations.

(c) **Confirmation that the General Authorization applies or notification of permit requirement.**

(1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in § 216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the **Federal Register** notifying the public of letters of confirmation issued.

(d) **Terms and conditions.** Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within

90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section:

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that

resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(6) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and

(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) **Suspension, revocation, or modification.** (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS; or

(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

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