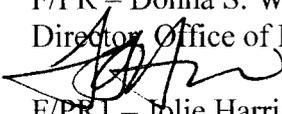




JUN 27 2014

MEMORANDUM FOR: F/PR – Donna S. Wieting  
Director, Office of Protected Resources

FROM:   
F/PR – Jolie Harrison  
Acting Chief, Permits and Conservation Division

SUBJECT: Report on the Application for a Public Display Permit (File No. 17754): Recommendation for Issuance

I recommend the National Marine Fisheries Service (NMFS) issue a public display permit, pursuant to the Marine Mammal Protection Act of 1972 as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR Part 216). The permit was requested by Sea World LLC, 9205 South Park Circle, Suite 400, Orlando, Florida 32819 [Brad Andrews, Responsible Party].

### Summary of requested activities

Species: One female, captive-born Pacific white-sided dolphin (*Lagenorhynchus obliquidens*).

Objectives: Importation of the subject animal for public display purposes.

Location: Transport from the Kamogawa SeaWorld, Chiba, Japan to Sea World San Antonio in Texas.

Methods: Air transport subject to the Animal Welfare Act.

Duration: The permit would be valid for three years from the date of issuance.

### Chronology of processing

August 28, 2012	Date of application
January 11, 2013	Application complete
February 04, 2013	Application published in the <u>Federal Register</u>
February 04, 2013	Application distributed
February 19, 2013	Marine Mammal Commission comments received
February 25, 2013	Application posted on OPR website to facilitate multiple requests from the public to review
March 06, 2013	Close of public comment period
May 1, 2013	Additional information requested regarding Kamogawa SeaWorld (replacement of the animal and legal possession)



May 8, 2013	Certificate of Possession submitted by Kamogawa SeaWorld (legal possession)
September 6, 2013	Information requested regarding Kamogawa SeaWorld's (replacement of the animal)
November 11, 2013	Statement regarding replacement of the animal received from Kamogawa SeaWorld (via Sea World LLC)

## Summary of external comments and response

NMFS published a notice in the *Federal Register* announcing receipt of the application, making it available for public review. The application was also provided to the Marine Mammal Commission and the USDA Animal and Plant Health Inspection Service (APHIS). The following external comments were received regarding the application.

### **The Marine Mammal Commission (MMC)**

The MMPA stipulates that NMFS may not issue a permit without first seeking review of the application by the MMC and its Committee of Scientific Advisors.

In a letter dated February 19, 2013, the MMC recommended approval of the application provided that NMFS, in consultation with the APHIS, is satisfied that the applicant's plans and facilities for transporting and maintaining the dolphin meet the requirements established under the Animal Welfare Act (AWA) and are adequate to provide for its health and well-being.

The MMC believes that the activities for which it has recommended approval are consistent with the purposes and policies of the MMPA.

**Response:** The application was reviewed by APHIS and their comments are below. In consultation with APHIS, NMFS believes that the applicant is capable of transporting and maintaining this animal in accordance with the AWA.

### **The USDA Animal and Plant Health Inspection Service (APHIS)**

Facilities that hold marine mammals for public display must be licensed by APHIS, and animals must be held and transported in compliance with the provisions of the AWA (7 U.S.C. 2131 – 2156). APHIS has jurisdiction under the AWA for enforcing the standards and certification requirements for the humane handling, care, treatment, and transportation of mammals. The application was forwarded to APHIS for review and comment specific to compliance of the facility with the AWA and APHIS implementing regulations.

In a letter dated February 6, 2013, APHIS had no objection to the import. APHIS confirmed that the facility is licensed under the AWA and the transportation appeared to be compliant with the AWA. In addition, APHIS confirmed that the exhibit (a complex of 4 pools) would be space compliant with the addition of this animal, but noted that the holding pool could not be used for long-term housing of animals.

**Public Comments:** Approximately three hundred and fifty comments were received from NGOs and private citizens in opposition to this permit application. Many of the comments were form letters or included similar information; therefore the comments are summarized here.

Comments encompassed the following arguments against the importation:

1) Opposition to Public Display: Many of the commenters expressed opposition to the capture and confinement of whales and dolphins for the purposes of public display. They argue that captivity is stressful and the needs of such highly intelligent animals cannot adequately be met. More specifically, one commenter expressed welfare concerns for the animal as a result of being separated from her pod at Kamogawa SeaWorld, acclimation to her new environment and the process of introduction to the resident population at Sea World of Texas.

**Response:** The MMPA provides for exceptions to the moratorium on take for the purpose of public display, including the issuance of import permits if certain criteria are met. Comments regarding captive maintenance and care are beyond the scope of issues for NMFS to consider under the MMPA and are under the purview of APHIS under the AWA. As described above, APHIS was consulted regarding the ability of the applicant to comply with the AWA in the transport and maintenance of this animal.

2) Insufficient education programs: Commenters described the education programs at marine mammal public display facilities as inadequate, inaccurate, and incomplete. Some commenters debated whether the entertainment value of these animals translated into educational value. One commenter argues that Sea World is failing in its education/conservation by not educating the public about the drive fisheries and that Sea World's past connections with the drive fisheries taint the education/conservation messaging.

**Response:** Section 104(c) of the MMPA provides for permits to be issued for the purpose of public display (for import and capture from the wild) provided that certain criteria are met. Section 104(c)(2)(A)(i) of the MMPA specifies that facilities must offer "a program for education or conservation purposes that is based on professionally recognized standards of the public display community." We recognize that the public display industry is largely self-regulated under the 1994 Amendments to the MMPA, including that the "professionally recognized standards" for education and conservation programs for public display have been established by the public display industry.

Sea World LLC submitted a summary of their education programs in the application. Their program is based on the professionally recognized standards established by the Association of Zoos and Aquariums (AZA) and Alliance of Marine Mammal Parks and Aquariums (AMMPA) of which Sea World of Texas is a member. A notice was published in the *Federal Register* by NMFS on October 6, 1994 (59 FR 50900) accepting the professional standards of the AZA and AMMPA as meeting the education/conservation component of the MMPA regulations. As such, NMFS is satisfied that the applicant meets public display criteria as specified in the MMPA.

3) Request contrary to purposes of the MMPA: One commenter argued that the requested permit was not consistent with the overall goal of the MMPA and that the evaluation of any application for a permit must be reviewed consistent with the intent to “protect” marine mammals and “restrict” any activity that is potentially inconsistent with the purpose of the MMPA.

**Response:** The MMPA specifically provides for an exception to the prohibitions for the purpose of public display, including issuing permits for the take and import of marine mammals if certain criteria are met. By providing for the exception, import for public display of marine mammals is consistent with the purposes of the MMPA, as long as the issuance criteria are met, which is the case for this permit.

4) Humaneness and Risk of Transport: Commenters noted that transport in general is stressful and suggested that transport in and of itself is inhumane. Specifically, concerns were raised regarding the lack of details provided about the transport and the potential effects to the animal.

**Response:** “Humane” is defined by the MMPA as “that method of taking which involves the least possible degree of pain and suffering practicable to the mammal involved.” See MMPA Section 3(4). The transport of marine mammals is under the purview of APHIS and is covered under the AWA. APHIS was consulted on this application and provided comments (see APHIS comments above). Based on previous comments received from APHIS, Special Condition B.2.c. of the permit requires that the travel plan be documented and the animal be accompanied by a health certificate signed within 10 days of the transport.

5) Regulatory Process: A comment was received indicating that the public did not have adequate time to review the permit application and submit comments. This was based on when the commenter became aware of the application on February 24, 2103.

**Response:** The application was received on August 28, 2012, the application was not considered complete until January 11, 2013, after receipt of additional information. The application was published in the *Federal Register* on February 4, 2013, and the application was available for public comment for 30 days in accordance with NMFS implementing regulations (50 CFR 216.33(d)(1)(iii)).

6) Origin of the animal, drive fisheries and international trade: The commenters reference the MMPA issuance criteria that “the proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock (216.34(a)(4))” with respect to the drive fisheries and international trade. Commenters expressed concerns that the animal is of a species that is taken in the Japanese drive fisheries - a recognized mechanism for capturing animals for public display. Commenters note that only recently have Pacific white-sided dolphins been a target of the drive fisheries in response to the demand by marine mammal parks to acquire this species. Commenters argue that it is possible that this animal’s parents

were captured in the drive fisheries or that this animal was captured in the drive fisheries, and not born in captivity, as documented in the application. Commenters further express concern that upon importation of this animal, Kamogawa Sea World will simply replace the animal with another animal potentially from the drive fisheries. In addition, commenters believe that inadequate documentation was provided that prove the dolphin was captive born and that the parents of this dolphin were incidentally by-caught in fishing operations in 1994 cannot be verified, and therefore, NMFS should deny the permit application.

**Response:** The applicant included a statement from the General Manager and Director of Zoological Operations at Kamogawa Sea World that the animal proposed to be imported was captive born on May 3, 2006 at Kamogawa Sea World. The statement also indicated that the sire and dam of the animal proposed to be imported were incidentally captured in set nets on February 8 and February 5, 1994, respectively and transported to Kamogawa Sea World on November 8, 1994. The statement confirmed that neither the sire nor dam were captured in the drive fishery. In addition, the applicant provided specimen reports from the International Species Information System for the animal proposed to be imported and its sire and dam.

In response to public comments, Kamogawa Sea World provided certificates of possession for both of the parents as documentation that the parents were obtained incidentally and were being held in accordance with Japanese law. In addition, Kazutoshi Arai, General Manager of Kamogawa Sea World, provided a signed affidavit stating that Kamogawa Sea World had no plans to replace the animal to be imported.

The commenters did not provide any evidence to support their assertions that any of these animals were captured in the drive fisheries or that Kamogawa Sea World had recently obtained animals from the drive fisheries. Although NMFS has issued permits for the importation of marine mammals taken in drive fisheries in the past (1983 – 1992), since then, NMFS has taken another look at drive fisheries specifically and has determined that drive fisheries cannot be considered to be a humane take under the MMPA and has not issued import permits for animals from that source.

7) Departure from Long-Standing Policy: One commenter stated that no import permits had been granted in over 20 years and that such a departure from policy and practice must be fully explained prior to reversing current practices.

**Response:** This commenter is misinformed. The commenter was referring to information that was provided as part of a public meeting regarding an application for a permit to import recently collected marine mammals. The commenter quoted a handout regarding authorizations for capture of wild cetaceans for public display purposes. The information was that NMFS has not received an application to capture wild cetaceans from U.S. waters, or to import cetaceans that had been recently captured in foreign waters, in more than 20 years. In fact, many cetaceans that have been captive born or were long-time captive animals have been imported into the U.S. within the last 20 years.

8) Whale Meat Trade in Japan: One commenter alleged that the sale of whale jerky at Kamogawa Sea World presents a risk to the health and welfare of marine mammals in violation of the MMPA (50 CFR 216.34(a)(1)) and that the partnership of Sea World and Kamogawa Sea World legitimizes, benefits and supports an organization involved in the international sales of whale meat products from a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) protected species. In addition, the commenter contends that the whale meat contains levels of mercury that make it unsafe for human consumption.

**Response:** 50 CFR 216.34(a)(1) requires that the proposed activity (i.e. the import of the dolphin) is humane and does not present any unnecessary risks to the health and welfare of marine mammals. This comment is not applicable to this issuance criterion because it has nothing to do with the proposed activity, which is the import of the dolphin.

9) CITES: Pacific white-sided dolphins are listed as Appendix II under CITES and transport of this animal will require an export permit from Japan. Commenters requested that the CITES permit be provided prior to a decision on the application.

**Response:** As an Appendix II listed species, the export permit must be issued by the Government of Japan and it is the Japanese government's responsibility to evaluate and issue the CITES export permit for this dolphin. CITES requires that a country's Management Authority determine that an export "...will not be detrimental to the survival of that species" (Article IV. 2. a.). Furthermore, CITES requires that a country's Management Authority is satisfied that "...any living specimen will be so prepared and shipped as to minimize the risk of injury, damage to health or cruel treatment" (Article IV. 2. c.). NMFS does not require that applicants submit their CITES permits along with their MMPA applications. The permit requires the proper CITES export permits be obtained prior to importation of this animal into the U.S. (Special Condition B.2.d.).

10) U.S. Responsibility: The U.S. was one of the first countries to display captive cetaceans and now has one of the largest public display industries in the world. The U.S. must assume responsibility for shaping the nature of this industry and its role in live cetacean trade in relation to this application, and its role in maintaining the highest standards in procuring animals for U.S. facilities.

**Response:** The MMPA provides NMFS with authority to issue permits for the importation of marine mammals for public display purposes (16 U.S.C. 1374; Section 104 (c)) provided that certain criteria are met. NMFS is making a decision based on this particular permit application for the importation of a single marine mammal.

11) Request for a Public Hearing: Multiple commenters requested NMFS hold a public hearing because of the public interest, primarily opposition, in this application and in order to allow for the full measure of public input on the proposed action.

**Response:** NMFS responds to this comment by reiterating that the MMPA provides for exceptions to the moratorium on take and import for the purpose of public display. A public hearing was not found to be warranted because documentation necessary to inform the decision could be provided in writing during the public comment period.

## Applicable federal permits and consultations

**Marine Mammal Protection Act (MMPA) permit:** Public display permits are issued under section 104 of the MMPA and NMFS's implementing regulations at 50 CFR Part 216. These permits exempt public display of marine mammals from the MMPA's take and import prohibitions. An MMPA section 104 permit is required for the proposed activity because it will result in importation of a marine mammal.

**Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES):** The requested species is listed on Appendix II of CITES. Special Condition B.2.d. requires a CITES export permit prior to import. Prior to providing an export permit for an Appendix II species, a country must make findings regarding: 1) the impact of the export on the survival of that species; 2) the collection of an animal was consistent with domestic laws; and 3) the shipment of an animal is done in a way that minimizes the risk of injury, damage to health, or cruel treatment.

**National Environmental Policy Act (NEPA):** Public display permits are, in general, categorically excluded from the requirement to prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) (NOAA Administrative Order Series 216-6, May 20, 1999). NMFS concluded that permit issuance is consistent with the limitations of a categorical exclusion identified in Section 6.03f.2(a) of NAO 216-6. The factors listed in Section 5.05b of NAO 216-6 were considered in evaluating the intensity of the action, including the potential cumulative impact on the protected species from the total amount of permits issued with CEs. The memorandum documenting this NEPA analysis is part of the administrative record for this permit.

## Findings and Recommendation

As required by the MMPA and NMFS regulations, the information provided by the applicant demonstrates that the import will be consistent with the purposes of the MMPA and applicable regulations. The Permits Division's review of the application and other relevant information, including MMC and public comments, indicates that the transport is consistent with the MMPA's definition of "humane."

As required by the MMPA, the permit specifies: (1) the effective date of the permit; (2) the number and kinds (species) of marine mammals to be imported; (3) the location and manner in which they may be imported; and (4) other terms and conditions deemed appropriate.

For these reasons, I recommend you sign the permit, with the terms and conditions as drafted by the Permits Division.