

*B. Upland Game Hunting.* We allow hunting of pheasant, quail, and partridge on designated areas on the Wahluke Unit of the Monument/Refuge in accordance with State regulations and subject to the conditions listed below:

1. You may possess only approved nontoxic shot while on the refuge.
2. We allow only shotguns and archery hunting.
3. We allow access from 2 hours before sunrise to 2 hours after sunset. We prohibit overnight camping and/or parking.

*C. Big Game Hunting.* We allow hunting of deer on the Wahluke Unit of the Monument/Refuge in accordance with State regulations and subject to the following conditions:

1. We allow only shotguns, muzzleloaders, and archery hunting.
2. We allow access from 2 hours before sunrise to 2 hours after sunset. We prohibit overnight camping and/or parking.

*D. Sport Fishing.* We allow fishing on the Wahluke Unit and designated Columbia River islands of the Monument/Refuge (those islands downstream of the Bonneville Powerline crossing, between River Mile 351 and 341) in accordance with State regulations and subject to the following conditions:

1. We allow access to the islands from July 1 to September 30, except for Islands 18 and 19 (downstream of Johnson Island), where we allow access from July 31 to September 30.
2. We allow access from 2 hours before sunrise to 2 hours after sunset. We prohibit overnight camping and/or parking.

3. We allow nonmotorized boats and boats with electric motors on the WB-10 Ponds, with walk-in access only.

\* \* \* \* \*

**Willapa National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and snipe on designated areas of Riekkola, Lewis, Tarlatt Slough, and Leadbetter Units in accordance with State hunting regulations and subject to the following conditions:

1. Prior to entering the hunt area at the Riekkola and Tarlatt Slough Units, we require you to obtain a refuge permit, pay a recreation user fee, and obtain a blind assignment.
2. At the Riekkola and Tarlatt Slough Units, you may take ducks and coots only coincidental to hunting geese.
3. We allow hunting on Wednesday and Saturday in the Riekkola and Tarlatt Slough Units only from established blinds.
4. At the Lewis Unit, we prohibit hunting from the outer dike that separates the bay from the freshwater wetlands.
5. At the Riekkola and Tarlatt Slough Units, you may possess no more than 25 approved nontoxic shells per day while in the field.
6. At the Leadbetter Unit, you may possess only approved nontoxic shot.

\* \* \* \* \*

*C. Big Game Hunting.* We allow hunting of deer, elk, and bear on Long Island and on designated areas of the Bear River Unit, in accordance with State hunting regulations and subject to the following conditions:

1. At Long Island you must possess a valid refuge permit and report game taken, as specified with the permit.
2. At Long Island we allow only archery hunting and prohibit firearms.
3. At Bear River we do not allow bear hunting.
4. We prohibit dogs.

\* \* \* \* \*

33. In § 32.69 Wisconsin by:  
 a. Revising paragraph C.1. of Fox River National Wildlife Refuge;  
 b. Revising paragraph D. of Horicon National Wildlife Refuge;  
 c. Revising paragraphs A. and B. of St. Croix Wetland Management District; and  
 d. Revising Trempealeau National Wildlife Refuge to read as follows:

**§ 32.69 Wisconsin.**

\* \* \* \* \*

**Fox River National Wildlife Refuge**

\* \* \* \* \*

*C. Big Game Hunting.* \* \* \*

1. We require refuge permits during designated time periods.

\* \* \* \* \*

**Horicon National Wildlife Refuge**

\* \* \* \* \*

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following condition: We allow only bank fishing.

\* \* \* \* \*

**St. Croix Wetland Management District**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds throughout the district except that you may not hunt on designated portions posted as closed of the St. Croix Prairie Waterfowl Production Area (WPA) in St. Croix County.

*B. Upland Game Hunting.* We allow hunting of upland game throughout the district except that you may not hunt on designated portions posted as closed of the St. Croix Prairie WPA in St. Croix County.

\* \* \* \* \*

**Trempealeau National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following condition: We require a refuge permit.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: We require a refuge permit.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require a refuge permit.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow only hand-powered boats or boats with electric motors on the refuge.
2. You must remove ice fishing shelters from the refuge following each day's hunt.
3. We prohibit possessing archery or spearing equipment on refuge pools at any

time. We allow taking rough fish by bow and arrow or spear only along the refuge boundary in the backwaters of the Trempealeau River, in accordance with State regulations.

\* \* \* \* \*

34. In § 32.72 Guam by revising paragraph D. of Guam National Wildlife Refuge to read as follows:

**§ 32.72 Guam.**

\* \* \* \* \*

**Guam National Wildlife Refuge**

\* \* \* \* \*

*D. Sport Fishing.* Anglers may fish and collect marine life on designated areas of the refuge only in accordance with refuge and Government of Guam laws and regulations. The leaflet is available at the refuge headquarters and anglers are subject to the following additional conditions:

1. Anglers may be on the refuge from 8:30 a.m. until 5:00 p.m. daily, except Thanksgiving, Christmas, and New Year's Day.
2. We prohibit overnight camping on the refuge.
3. You may not possess surround or gill nets on the refuge.
4. We prohibit the collection of corals, giant clams (*Tridacna* and *Hippopus* spp.), and coconut crabs (*Birgus latro*) on the refuge.

Dated: May 23, 2001.

**Joseph E. Doddridge,**  
*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 01-16500 Filed 7-2-01; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 001031304-0304-01; I.D. 080299B]

**RIN 0648-AH26**

**Protected Species Special Exception Permits**

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

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** NMFS is proposing to amend the regulations for permits to capture or import marine mammals for purposes of public display under the Marine Mammal Protection Act of 1972 (MMPA). The proposed revisions would implement amendments to the MMPA enacted April 30, 1994, affecting marine

mammals held captive for public display purposes and clarify the public display requirements relating to permits to capture or import, transport or transfer, and export marine mammals.

**DATES:** Comments on this proposed rule must be postmarked or received by September 4, 2001.

**ADDRESSES:** Comments on this proposed rule may be mailed to the National Marine Fisheries Service, Office of Protected Resources, Permits Division (F/PR1), 1315 East-West Highway, Rm. 13705, Silver Spring, MD 20910.

Comments may also be submitted by facsimile at (301) 713-0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Ann Terbush, National Marine Fisheries Service, Office of Protected Resources, Permits Division (301/713-2289).

**SUPPLEMENTARY INFORMATION:**

**General Background**

A proposed rule was published on October 14, 1993 (58 FR 53320), to consolidate existing permit regulations promulgated under the MMPA, the Endangered Species Act, and the Fur Seal Act (Acts), governing the take, import, or export of protected species under the jurisdiction of NMFS for purposes of scientific research, enhancement, and public display. That proposed rule also clarified procedures for the disposition of rehabilitated stranded marine mammals.

On April 30, 1994, amendments to the MMPA, Pub. L. 103-238, 16 U.S.C. 1361 *et seq.* (1994 amendments) added a prohibition on marine mammal exports and significantly changed the scope and extent of permitting authority for public display purposes. These amendments eliminated the basis for many of the public display provisions in the 1993 proposed rule. NMFS determined that permitting and other requirements specific to capturing, importing, exporting, or transporting marine mammals for public display under the 1994 MMPA amendments could only be addressed in a new proposed rule.

A final rule was issued on May 10, 1996, (61 FR 21926) implementing some of the changes proposed in 1993. That final rule, which became effective on June 10, 1996, established basic permit requirements under the Acts to take, import, and export marine mammals and marine mammal parts for purposes of scientific research, enhancement, photography, and, where captures and

initial imports are involved, for public display. That final rule also provided additional permit criteria specific to scientific research and to enhancement, and established clarified administrative procedures for determining the releasability or the non-releasability and subsequent disposition of rehabilitated stranded marine mammals.

**This Proposed Rule**

In addition to implementing the revised public display requirements of the MMPA, this proposed rule would amend the regulations governing the taking and importing of marine animals to (1) incorporate the MMPA marine mammal export prohibition, (2) provide an opportunity for public comment on the acquisition of an unreleasable beached or stranded animal by a facility that has not previously held marine mammals for public display, (3) clarify that a permit is needed to retain a releasable beached or stranded marine mammal, and (4) establish a means for identifying parts taken from public display animals and authorize the importation of parts for medical examination.

This proposed rule specifies particular requirements for the issuance of permits, the transfer or transport of marine mammals, the exportation of marine mammals, and the reporting of information to NMFS by marine mammal holders. The proposed rule also provides general requirements applicable to holders of marine mammals under the MMPA.

*1. Scope*

The MMPA and implementing regulations do not apply to marine mammals and marine mammal parts taken or born in captivity before December 21, 1972. The prior status of a marine mammal may be established by submitting an affidavit to the Director, Office of Protected Resources (Office Director) in accordance with § 216.14.

*2. General Requirements*

Animals held under a special exception permit may not be sold, purchased, exported, transferred, or transported for any purpose other than public display, scientific research, or enhancement.

The Office Director may also authorize the retention or transfer of custody of non-releasable rehabilitated marine mammals for public display purposes in accordance with § 216.27 (c).

A marine mammal held for public display may not be released into the wild unless such release is specifically authorized under the terms of a

scientific research or enhancement permit.

*3. Disposition for a Special Exception Purpose*

The proposed rule provides that in cases where the proposed recipient of a rehabilitated non-releasable marine mammal is a new facility or does not currently hold U.S. marine mammals for public display purposes, NMFS will publish a notice in the **Federal Register** to open a special 30-day public comment period as part of the review of the facility to determine that MMPA requirements will be met. This comment period will provide an opportunity for NMFS to gather information from the public and consider whether to authorize the permanent placement of the rehabilitated marine mammal at that facility. In instances where a rehabilitated beached and stranded marine mammal has been determined releasable, it may be held for public display, scientific research, or enhancement in lieu of a direct capture from the wild. A permit would be required for the permanent retention of the animal for public display, scientific research, or enhancement.

Captive marine mammals may not be released into the wild. From a scientific perspective, the release of captive marine mammals is considered experimental. Scientists question the effect of time in captivity on marine mammals' ability to survive in the wild. Captivity can affect marine mammals' ability to forage in the wild, avoid predators, integrate with wild stocks, and avoid interactions with humans and vessels. Additionally, release poses risks to wild stocks, including the risk that released animals will introduce contagious diseases, disrupt essential social structures, pass on behaviors acquired in captivity that can be harmful in the wild, and alter the genetic composition of wild populations. These concerns are compounded by the fact that no established scientific protocols exist to guide researchers in the proper selection, training, release and follow-up of candidate marine mammals. Many of these concerns are highlighted in a detailed study of release conducted in 1993 by the Department of the Navy in an effort to consider management options for marine mammals it maintained.

The Conference Report on the Department of Defense Appropriations Act of 1995 specifically addressed the need to obtain a scientific research permit for the release of captive marine mammals:

Given the potential for 'takes' under the Marine Mammal Protection Act or the Endangered Species Act, the conferees direct that in no case shall any release be attempted unless authorized by a scientific research permit issued by the Secretary of Commerce under the appropriate statutory authority.

H.R. Conf. Rep. No. 747, 103rd Cong., 2nd Sess. 9643 (1994).

On a related issue, there has been interest in conducting "pinger-recall" training of captive dolphins outside of pens or enclosures in the open ocean. While NMFS believes that this is primarily under the purview of APHIS, NMFS remains concerned about the potential effect on wild populations of marine mammals and their possible interactions with captive dolphins. These risks have been noted earlier in this section. Another consideration associated with any inadvertent release is the potential disruption of long-term studies of resident populations of marine mammals in certain locations. Based on the risks to captive marine mammals as well as resident wild populations of dolphins or other marine mammals in the area, the proposed regulations provide that any release of recall training requires advance authorization by the Office Director. This authorization would provide conditions similar to those that would be included in scientific research or enhancement permits that authorize release of marine mammals to the wild.

Under the proposed regulations, the only purpose for which an authorization would be granted is to train the animals for pinger-recall or similar behavioral conditioning to retrieve the animals should an inadvertent release occur or a release is required for the health and welfare of the animals in the event of a natural disaster or facility failure. Since this training would not be part of an interactive program or show, the general public (including paying customers to that facility) would not participate in this training. In addition, facility operators and trainers engaging in this activity would be expected to provide a contingency plan for approval by NMFS to locate and retrieve their animals should an inadvertent release occur. Finally, NMFS must consider the status of any wild marine mammal stocks in the area and the potential effects of inadvertent release of the captive marine mammals on these wild stocks in evaluating such requests.

#### 4. General Public Display Requirements

Some activities involving animals held for public display can only occur as authorized under scientific research permits. The conduct of intrusive research (see definition, § 216.3) on any

marine mammal held for public display is prohibited except under the conditions of a research permit.

#### 5. Falsification of Reports

The proposed regulations would make it unlawful for any person subject to the jurisdiction of the United States to fail to disclose materially relevant information or to falsify information in connection with marine mammal inventory, permit-related reports, or transport notifications required under this subpart D of 50 CFR part 216.. Any person who violates these provisions would be subject to the imposition of penalties in accordance with the procedures set forth in 15 CFR part 904.

#### 6. Marine Mammal Parts

As originally mandated in 1972, the restriction against the import and export of marine mammal parts was designed to prevent the development of commercial markets for marine mammal parts or products derived therefrom. However, the circumstances of bona fide scientific research involving import and export of marine mammal parts are varied, making clarity in regulations difficult. In addition, previously only the export of ESA listed species and parts was prohibited. The 1994 Amendments extended this prohibition to all marine mammals and marine mammal parts, except for the export of living marine mammals for purposes of public display.

In response, NMFS has made every effort to implement the intent of the law without unduly burdening scientific research activities by ensuring that adequate documentation is provided for a part's acquisition, location and possession.

The proposed regulations would revise §-216.37 to allow for the import, without a specific permit, of specimens for diagnostic or necropsy purposes from marine mammals that have been legally exported from the United States and are held in foreign jurisdictions. In lieu of a permit, the Office Director will issue a letter of authorization to the requestor that must accompany the shipment.

#### 7. Permits to Capture or Import

Prior to the 1994 amendments, under section 104 (c)(1) of the MMPA, NMFS was charged with specifying in its permits the methods of care and transportation that must be used both during and after the capture or importation of marine mammals. Under this provision, NMFS was responsible for including captive care requirements in permits issued to both the initial holders of captured or imported animals

and to the recipients of those animals when they were transferred from one facility to another. The facilities receiving marine mammals were thus generally required to have permits before they could assume custody of the animals.

The 1994 amendments removed the authority of NMFS to specify methods of care and transportation of marine mammals held for public display purposes. Public display permits are now required only for the capture or importation of marine mammals, and not for the possession of marine mammals in captivity. Captive care and maintenance of marine mammals held for public display are now under the sole jurisdiction of the Department of Agriculture's Animal and Plant Health Inspection Service (APHIS), which administers the Animal Welfare Act (AWA).

By removing the jurisdiction of NMFS over public display captive animal care, the amendments eliminated the basis for NMFS requirement that all public display facilities be issued permits before acquiring marine mammals. The MMPA now specifically states that a permit issued by NMFS to take or import a marine mammal for the purpose of public display grants the holder the right to transfer the marine mammal from one public display facility to another without obtaining any additional permit or authorization. However, this right to transfer may only be invoked under certain specified circumstances, including the requirement that the recipient complies with the three basic public display criteria requirements of section 104 (c)(2)(A) of the MMPA.

a. *Applicants.* An applicant for a public display permit is the person (or entity) that will assume custody of the marine mammal to be captured or imported under the permit. All applicants for public display permits must comply with permit-application submission requirements. These requirements are stated in § 216.33.

b. *Applications and Issuance Criteria.* Under the MMPA as amended, permits to take or import a marine mammal for public display may be issued only to an applicant who (1) is registered or licensed under the AWA, (2) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and provides access to such facilities that is not limited or restricted other than by charging of an admission fee, and (3) offers a program for education or conservation that is based on professionally recognized standards of the public display community.

NMFS is proposing that the introductory phrase of the second criterion, "maintains facilities for the public display of marine mammals . . .," means facilities that comply with all applicable APHIS standards (9 CFR 3.104 through 3.118). In this regard, such facilities include traveling displays/exhibits where the primary enclosure used as the animal's permanent housing structure is used to transport the marine mammal and also complies with all applicable APHIS standards (9 CFR 3.104). In addition, if any marine mammal is to be held at a facility other than one maintained by the applicant, the applicant must include a letter from that facility agreeing to hold those marine mammals, and certifying that the facility is registered or licensed under the AWA and meets APHIS standards for holding marine mammals.

Documentation of compliance with the requirement that public display facilities be "open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee" may include a brochure, flyer, or other publicly distributed document that states the dates, times, and, where applicable, admission fee, for the public display facility involved.

Prior to the 1994 amendments, section 104 (c)(2) of the MMPA required that NMFS determine whether the program for education or conservation offered by the applicant was acceptable based on professionally recognized standards of the public display community. In 1989, NMFS determined that the statutory phrase "professionally recognized standards of the public display community" did not refer to any standards that had been established; i.e., such standards did not exist. Therefore, on May 22, 1989, NMFS published in the *Federal Register* (54 FR 22001) a notice of interim policy stating that, in order to be determined acceptable by NMFS, "an applicant's education or conservation program must include a program of formal or informal learning that conveys accurate information about the marine mammals being displayed and communicates in an effective manner a message and purpose that are consistent with the policies of the MMPA."

There are no uniform professionally recognized standards established by the entire public display community for education or conservation programs. The Alliance of Marine Mammal Parks and Aquariums and the American Zoo and Aquarium Association, together, represent approximately 60 percent of the facilities that hold marine mammals

for public display. Following enactment of the 1994 MMPA amendments, NMFS asked both of these organizations to prepare a list of standards. These two organizations prepared and submitted their separate respective standards, which were then published by NMFS for reference purposes (59 FR 50900, October 6, 1994) as examples of standards on which education or conservation programs are based. Other professionally recognized standards may also be used.

These proposed regulations, therefore, specify that any receiver of captive marine mammals (i.e., any person, including any permit applicant or display facility, to which captive animals are to be transported, sold, imported, exported, or otherwise transferred) must submit a description of their education or conservation program to NMFS.

Applicants for permits to capture or import marine mammals for public display purposes must provide NMFS with documentation confirming that they: (1) are registered or hold a license issued under 7 U.S.C. 2131 *et seq.*; (2) maintain facilities for the public display of captive marine mammals that is open to the public on a regularly scheduled basis with access not limited or restricted other than by charging of an admission fee; and (3) offer a program for education or conservation purposes based on professionally recognized standards of the public display community.

In addition, applicants must also demonstrate that the proposed capture or importation is from a source that will have the least possible effect on wild populations and that any capture is consistent with quotas established by NMFS on captures and, where no quota is in effect, that it will not have a significant adverse impact on the species or stock of the animals to be captured. The capture of marine mammals to be imported must also be consistent with requirements for capturing animals in waters under U.S. jurisdiction.

*c. Restrictions.* The final rule that became effective June 10, 1996, contained general restrictions, conditions, and reporting requirements applicable as appropriate to any special exception permit, including public display permits. This proposed rule includes additional restrictions specific to public display permits and holders of captive marine mammals.

#### *8. Re-export of Marine Mammals*

When a marine mammal is imported into the United States under an import permit, the permit will authorize re-

export of that animal to the original foreign holder provided NMFS is given 15 days advance notice of the re-export. This will facilitate the re-export of animals that are in the United States on temporary public display or breeding loans.

#### *9. Transport or Transfer of Captive Animals and Notifications*

Holders of captive marine mammals for public display have the right to transport, export, sell, purchase, transfer an interest in or otherwise transfer marine mammals for public display purposes without authorization from NMFS, provided that the recipient is in compliance with the MMPA and certain other requirements, including advance notifications, are met. All holders of marine mammals are required to provide identification data for each animal they hold, its location, and information about any animal transport or transfer. This requirement applies to holders of animals exported from the United States as well as transfers and transports within the United States. The proposed rule states that NMFS must be notified at least 15 days, but not more than 90 days, in advance of the transport, export, sale, purchase, transfer of an interest in or other transfer of any animal held for public display under the MMPA. Holders must submit a new transport notification if the marine mammals are not transferred within 60 days after the planned transfer date, if the species to be transported changed or increased, or if the number of animals to be transported is increased.

This 15-day advance notification requirement would apply to the transport of marine mammals among facilities maintained by the same permittee or holder as well as among those facilities maintained by different persons. Marine mammal holders that transport animals from one site to another as traveling exhibits must also comply with the 15-day advance notification requirement, although a transport schedule may be provided in these cases.

There are two proposed exceptions to this 15-day advance notification requirement. In the first, NMFS may authorize a marine mammal transfer before the full 15-day notification period has elapsed on the basis of a request that details circumstances which justify the inability to provide 15 days advance notice of the transfer (e.g., time critical business opportunity). In the second, a documented medical emergency that justifies the transport is provided to the Office Director within 24 hours. These limited exceptions to

the 15-day advance notification requirement are not applicable to exports.

Where animals are transported among display facilities, notification must include a certification from the recipient facility that it meets the requirements for a public display permit. Since the 1994 MMPA amendments, NMFS has asked both the shipper and the receiver of marine mammals to certify that the receiver is in compliance with the MMPA. In this manner the receiver documents his or her compliance with the basic criteria for holding marine mammals for public display purposes, and the shipper/holder is assured, to the extent practicable, that the intended recipient meets the criteria necessary for the shipper to invoke the right to transport or otherwise transfer marine mammals without obtaining any additional permit or authorization.

To ensure that all certification and notification requirements under the MMPA are met, holders must use NMFS' Marine Mammal Transport Notification (MMTN). The receiver must verify receipt of transferred marine mammals within 30 days.

#### 10. Reporting

All holders of marine mammals under the MMPA must comply with certain marine mammal inventory reporting requirements. Holders are required to notify NMFS within 30 days of the birth or death of animals. Stillbirths must be reported so that they can be distinguished for inventory purposes from successful births and from other mortalities. If the cause of death will not be known within 30 days, holders may note in the death notification that the cause of death is undetermined, and must then notify NMFS of the cause of death upon completion of necropsy analysis.

NMFS will also periodically request holders to verify data in its Marine Mammal Inventory database. To facilitate the entry and ensure consistency in the information reported by marine mammal holders into the database, such information must be submitted in accordance with any reporting formats that NMFS may establish. Holders must use NMFS' Marine Mammal Data Sheet (MMDS) to report changes in their inventories (i.e., births and deaths).

#### 11. Submission of Notifications and Reports

To ensure compliance with the statutory requirements and to reduce and streamline reporting and notification requirements, NMFS has entered into a Cooperative Agreement,

under the authority of section 112 (c) of the MMPA (16 U.S.C. 1382), with the International Species Information System (ISIS) to administer the captive marine mammal inventory database, including marine mammal transport notifications. ISIS is an international non-profit membership organization that manages a database and information system for wild animal species in captivity, including marine mammals, at more than 500 institutions in 54 countries. Under this cooperative agreement, ISIS will administer the captive marine mammal inventory information in consultation with NMFS as part of the central ISIS captive wildlife database and information system.

Many of the marine mammal holders who currently report marine mammal inventory information and transport/transfer notifications to NMFS also voluntarily contribute their inventory information to the ISIS. It is estimated that one-half of the marine mammal specimens are reported separately to both databases; therefore, converting to ISIS administration of the marine mammal database should ease the reporting burden for many marine mammal holders.

The major objectives of this Cooperative Agreement are to: (1) improve the long-term efficiency and quality of the captive Marine Mammal Inventory and Transport/Transfer database, (2) increase convenience and efficiency, and reduce cost and burden for reporting required under the MMPA by all holders of marine mammals, (3) eliminate duplicative reporting by many of the marine mammal holders, (4) enhance public access to the captive marine mammal information required under the MMPA, (5) eliminate duplication of data-collection efforts, and (6) avoid current duplication of development and maintenance of custom inventory database software by the ISIS and NMFS.

Under the proposed rule all marine mammal holders would be required to submit their 15-day transport notifications and birth/death reports directly to ISIS for processing and entering into the Marine Mammal Inventory database. Since exceptional transfer-related activities may require NMFS authorization, proposed Table 1 of this document outlines the types of inventory/transfer submissions and the locations for submission.

#### 12. Export of Captive Marine Mammals

Prior to the 1994 MMPA amendments, NMFS' policy dictated that the export of captive marine mammals for public display purposes could occur only if

NMFS issued a public display permit to the recipient. Under this policy, NMFS made the issuance of permits to export marine mammals for public display contingent on (1) certification of the accuracy of information from foreign permit applicants by the government with jurisdiction over the applicants' facilities; and (2) certification by that government that it would afford comity to any decision by NMFS to amend, modify, suspend or revoke a permit.

"Comity" is generally understood to be a rule of courtesy by which one government honors decisions made by another government. It is in situations where the United States lacks jurisdiction over persons or things located abroad that the U.S. Government may need to seek assurances of comity from foreign governments. Executive Branch agencies have inherent authority to ask foreign governments to honor decisions of the U.S. Government on the basis of comity. It has been the policy of NMFS since 1975 to require a comity statement for the export of marine mammals.

When Congress amended the MMPA in 1994, it prohibited the export of marine mammals. However, it also provided that, if certain conditions are met and maintained, persons holding marine mammals for public display purposes could export marine mammals without obtaining additional permits or authorizations from NMFS.

NMFS determined that, based on sections 104 (c)(2)(C), 104 (c)(2)(D), and 104 (c)(9), of the MMPA, Congress intended that any person receiving marine mammals via export meet standards comparable to the public display requirements of the MMPA. Since NMFS has no jurisdiction over the animals once they are exported, but is at the same time required to maintain an inventory of captive marine mammals and ensure comparability, NMFS concluded that the requirement of a comity statement is a reasonable means of ensuring that comparable public display requirements will be met. In that context NMFS intends that through comity agreements, using their own laws, the foreign governments will ensure that: (1) care and maintenance standards comparable to the APHIS standards that apply in the U.S. are met; (2) marine mammals continue to be held for purposes consistent with section 104 of the MMPA; and (3) marine mammal inventory information for exported animals is provided to NMFS.

The export of marine mammals has proven to be one of the more controversial provisions of the MMPA. Since 1994, NMFS has heard from various parties with divergent views.

Some have argued that, because NMFS has no jurisdiction in foreign countries and the ability to ensure comparable standards are met is subject to changing political situations of foreign governments, exports must be banned altogether. Others argue that public display facilities should be free to exercise their rights to export with 15 days notice. They contend that NMFS has no authority to determine comparability, or to require comity letters, and that the requirement to meet comparable standards ends at the time of the export. Others argue that more stringent requirements are needed, such as the posting of a surety bond prior to export, requiring that annual on-site inspections be performed at the expense of the foreign facility receiving marine mammals from the United States, or seeking a statutory amendment clarifying Congressional intent. NMFS believes that requiring a comity letter is the most practical and reasonable solution. However, NMFS is specifically requesting comments on this issue.

### 13. Seizure of Marine Mammals

This section clarifies that the loss of an APHIS Exhibitor's License is grounds for NMFS to revoke permits or seize marine mammals held for public display. Receipt from APHIS of a letter of intention to revoke such a license may indicate that a person or facility holding marine mammals is not reasonably likely to meet the requirements to hold them in the future and, therefore, those animals may be seized. At NMFS' discretion, the animals may be maintained in the same physical location with the assistance of any person under the direct control of, employed by or under contract to NMFS, or the animals may be physically moved to a new location. NMFS may recover expenses incurred for the seizure from the holder in accordance with section 104 (c)(2)(D) of the MMPA.

### Classification

NMFS prepared a Draft EA for this action and will finalize it before the final rule is published. Copies of the Draft EA are available on request (see **ADDRESSES**). NEPA requirements as they pertain to individual permits that may be issued under these proposed regulations will be addressed on a case-by-case basis.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if adopted as proposed,

would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule would not alter the structure of any business or require any modification to these businesses. The types of businesses that this proposed rule would affect are marine mammal parks and aquariums, oceanariums and zoos. The number of these businesses that would qualify as small businesses under the Small Business Administration's criteria is unknown. However, the only costs to these entities would be the administrative costs associated with applying for permits or major permit amendments and for various reports required for tracking the status of marine mammals held for display purposes. Permit fees would not be required, and the anticipated administrative costs should be minimal.

Accordingly, an Initial Regulatory Flexibility Analysis was not prepared.

A Regulatory Impact Review (RIR) was prepared by NMFS and is available upon request (see **ADDRESSES**).

The RIR describes the reasons why the action is being considered and contains a succinct summary of the objectives of, and the legal basis for, the proposed rule. These are described earlier in this preamble.

The RIR contains a description of the entities to which the proposed rule will apply. The Small Business Administration Standard Industrial Code for businesses of this type is 8422 - Arboreta and Botanical or Zoological Gardens. The entities within this group that would be affected are primarily existing public display and scientific research entities that hold marine mammals for public display purposes or conduct scientific research on captive marine mammals. The proposed rules may also affect entities that, although subject previously to MMPA requirements, were uncertain regarding such effects due to the less than specific nature of the previous regulations. The more explicit provisions of the proposed regulations are likely to affect entities whose circumstances or characteristics were not addressed directly or otherwise provided for in previous regulations, i.e., traveling exhibitors. The proposed rule establishes uniform criteria and requirements for all public display permit applicants and permit holders and others holding marine mammals for public display purposes, as well as consistent procedural, reporting and notification requirements.

The projected economic impact of the proposed revisions on affected small business entities consists primarily of a reduction in paperwork burden costs and is, therefore, expected to be beneficial. No other costs have been identified.

### Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648-0084. Public reporting burden for these collections of information is estimated to average 20 hours per response for public display permit applications, 29 hours per response for major amendments, 1 hour for transport/transfer notifications, and 30 minutes for each marine mammal inventory report.

This proposed rule also contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements and their estimated response times have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated to average 2 hours for a permit capture report, 30 minutes for a permit import report, 30 minutes for a permit capture notification, 30 minutes for a waiver request of the 15-day advance notice of transport, 30 minutes for an initial escape report, 1 hour for an escape report filed a week after the event, 2 hours for an escape report filed six months after the event, and 1 hour for an export certification.

The response estimates above include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to the Permits Division, Office of Protected Resources listed under the **ADDRESSES** heading of this document, and to OMB at the Office

of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

The proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

NOAA has determined that these proposed regulations do not directly affect the coastal zone of any state with an approved coastal zone management program.

#### List of Subjects in 50 CFR Part 216

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

Dated: June 21, 2001.

William T. Hogarth,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

#### PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE ANIMALS

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

**Authority:** 16 U.S.C. 1361 *et seq.*

2. In § 216.13, paragraphs (c) and (d) are redesignated as paragraphs (e) and (f), respectively, and new paragraphs (c), (d), and (g) are added to read as follows:

##### § 216.13 Prohibited uses, possessions, transportation, sales and permits.

\* \* \* \* \*

(c) Any person subject to the jurisdiction of the United States to purchase, possess, export, import, transport, or transfer a captive marine mammal, except as authorized under the Act or this part 216 and pursuant to a special exception permit, where required (i.e., for the purpose of public display, scientific research, or enhancing the survival or recovery of the species).

(d) Any person subject to the jurisdiction of the United States to release into the wild a captive marine mammal, except where the release into the wild of such a marine mammal is authorized specifically under a special exception permit, or pursuant to § 216.27 for beached and stranded marine mammals.

\* \* \* \* \*

(g) Any person to submit false information to any person authorized by the Secretary to implement or enforce the regulations of this part 216.

3. In § 216.27, paragraphs (c)(3) through (c)(6) are redesignated as (c)(5) through (c)(8), respectively, paragraph (c)(2) is redesignated as paragraph (c)(3), and new paragraphs (c)(2) and (c)(4) are added to read as follows:

##### § 216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

\* \* \* \* \*

(c) \* \* \*

(2) A special exception permit is required to retain a beached or stranded marine mammal that has been determined to be releasable to the wild following rehabilitation (see §§ 216.33 through 216.38 and § 216.43) for scientific research, enhancement or public display. Retention of any such marine mammal pending issuance of a special exception permit is prohibited unless authorized by the Office Director and must comply with paragraph (b)(5) and (c) of this section.

\* \* \* \* \*

(4) Upon receipt of a request to retain or transfer a non-releasable marine mammal for public display at a facility that has not previously held marine mammals for public display, the Office Director shall publish a notice of receipt of the request in the **Federal Register** and invite comments from interested parties. The notice will establish a 30-day comment period which must elapse before action can be taken on the request.

\* \* \* \* \*

4. In § 216.32, paragraph (a) is revised to read as follows:

##### § 216.32 Scope.

\* \* \* \* \*

(a) All marine mammals and marine mammal parts taken, including marine mammals born in captivity after December 20, 1972. The prior status of a marine mammal may be established in accordance with 50 CFR 216.14; and

\* \* \* \* \*

5. In § 216.37, the introductory text and (d)(2) are revised, and a new paragraph (e) is added to read as follows:

##### § 216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart or obtained from or following the death of a captive marine mammal held for public display:

\* \* \* \* \*

(d) \* \* \*

(2) A unique number assigned by the permit holder or for parts obtained from or following the death of a captive

marine mammal held for public display, the NMFS Marine Mammal Inventory Identification Number assigned to the subject captive marine mammal is marked on or affixed to the marine mammal specimen or container;

\* \* \* \* \*

(e) The Office Director may authorize the importation, without a permit, of any marine mammal part derived from a marine mammal exported from the United States if the purpose of the importation is for medical examination and diagnosis concerning that marine mammal's health if it is alive or the cause of death if it has died. Further disposition of any such part must be in accordance with paragraphs (a) through (d) of this section.

6. Section 216.43 is added to read as follows:

##### § 216.43 Public display.

(a) *General Public Display*

*Requirements.* (1) For the purposes of the section, the terms "Custody," "Holder," "Receiver," "Transfer," and "Transports" are defined as follows:

(i) *Custody* means the responsibility for and the authority to determine the disposition of the captive marine mammal, including transfer and transport.

(ii) *Holder* means any person who has custody of a captive marine mammal. A holder may also be a public display permit holder.

(iii) *Receiver* means a person who receives custody of a transferred marine mammal. Where an interest in a marine mammal is being purchased or otherwise transferred, the receiver is the purchaser or transferee. After a marine mammal is transferred, the receiver becomes a holder.

(iv) *Transfer* means to convey any custodial interest in a marine mammal by any means including, but not limited to donation, purchase, or sale. A conveyance of interest in a marine mammal means the transfer of a whole interest. A transfer of a marine mammal may occur without a transport from one facility to another.

(v) *Transport* means the physical movement of marine mammals between facilities or between distinct geographic locations.

(2) Holders of marine mammals for public display purposes must comply with the three public display requirements at paragraphs (b)(3)(i) through (iii) of this section.

(3) No person, holder, or facility may conduct intrusive research on any captive marine mammal held for public display purposes unless the Office Director authorizes such research under

a separate scientific research or enhancement permit.

(4) Right of inspection. To facilitate compliance with the requirements of § 216.43:

(i) The holder shall allow any designated employee of NOAA, or any person designated by the Office Director to:

(A) Examine any marine mammal held for public display;

(B) Inspect all facilities and operations which support any marine mammal held for public display; and

(C) Review and copy all records concerning any marine mammal held for public display.

(ii) The holder shall cooperate with any examination, inspection, or review conducted pursuant to paragraph (b)(6) of this section, and shall provide any other relevant information requested.

(5) Temporary release authorizations for purposes of open-water training of captive marine mammals may be granted by the Office Director.

(b) *Permits to capture or import marine mammals.* No person may capture a marine mammal from the wild or import a marine mammal for public display purposes, except pursuant to a special exception permit for public display. In addition to the provisions at § 216.33 through § 216.38, permits for public display are governed by the following requirements:

(1) *Applicant.* The applicant must be the person with or seeking custody of the marine mammal. If the applicant is a corporation or partnership, the application must indicate the date of incorporation or when the partnership was formed, and the State in which the corporation or partnership was formed. In the case of imports, if authority over the custody of the marine mammal remains with a foreign entity, the applicant must be the U.S. entity that will assume temporary custody of the marine mammal while in the United States.

(2) *Application submission.* (i) An Applicant must submit a complete permit application at least 90 days before the desired effective date of the permit. Application instructions can be obtained from the Permits Division, Office of Protected Resources.

(ii) Upon receipt of an incomplete or inaccurate application, the Office Director will notify the applicant of the deficiency. If the applicant fails to correct any deficiencies within 60 calendar days, the application will be deemed withdrawn.

(3) *Issuance criteria.* For the Office Director to issue a public display permit, the applicant must:

(i) Offer a program for education or conservation purposes based on professionally recognized standards of the public display community;

(ii) Be registered or hold an exhibitor's license issued under the Animal Welfare Act (AWA), 7 U.S.C. 2131 *et seq.*, and comply with all applicable Animal and Plant Health Inspection Service (APHIS) standards at 9 CFR subpart E;

(iii) Maintain a facility for the public display of captive marine mammals that is open to the public on a regularly scheduled basis, with access not limited or restricted other than by charging of an admission fee. For purposes of this paragraph (b)(3)(iii):

(A) A facility includes a traveling display/exhibit where the primary enclosure used to transport a marine mammal is also used as the permanent housing enclosure;

(B) "Maintaining" a facility includes leasing, owning, or otherwise controlling the facility where the marine mammal will be kept; and

(C) If an applicant's facility is under construction at the time application is made and may not be licensed by APHIS before the Office Director's decision to issue or deny a permit, the applicant must, as part of the application, identify an alternative licensed facility and include a letter from the facility agreeing to hold the subject marine mammals;

(iv) Demonstrate that the proposed capture or importation of living marine mammals is one that will present the least practicable effect on wild populations;

(v) Demonstrate that any proposed permanent removal from the wild:

(A) Is consistent with any applicable quota established by NMFS, or

(B) Where there is no quota in effect, will not have, by itself or in combination with all other known takes and sources of mortality, a significant direct or indirect adverse effect on the protected species or stock, as determined on the basis of the best available information on cumulative take for the species or stock, including information gathered by the applicant concerning the status of the species or stock; and

(vi) Demonstrate that the capture of any marine mammal proposed for importation was, or will be, consistent with the MMPA, as outlined in § 216.34.

(4) *Permit restrictions.* In addition to the general permit restrictions outlined in § 216.35, the following restrictions apply to all public display permits issued under subpart D:

(i) Permit holders must comply with the requirements of paragraphs (b)(3)(i) through (iii) of this section.

(ii) Permit holders may not capture or import a marine mammal that is:

(A) From a species or stock designated as depleted under the MMPA or proposed by NMFS to be designated as depleted unless, for imports, the marine mammal to be imported is captive born and the provisions of paragraph (b)(6)(iv)(A) of § 216.41 are met; or

(B) At the time of capture or import, pregnant, lactating, or either unweaned or less than 8 months old unless the Office Director determines that such capture or importation is necessary for the protection or welfare of the animal.

(iii) Permit holders may not transfer or transport captive marine mammals unless:

(A) The receiver meets the public display criteria outlined in paragraphs (b)(3)(i) through (iii) of this section; and

(B) The permit holder has met all marine mammal transfer/transport notification requirements of § 216.43(e).

(iv) The authorization to capture a marine mammal from the wild or to import a marine mammal shall be valid for a period of time as set forth in the permit. If the capture or import does not occur during the period initially authorized, the Office Director may extend the authorized period upon request of the permit holder.

(5) *Permit conditions.* All public display permits issued under this subpart shall, in addition to the specific conditions set forth in § 216.36(a), contain other conditions deemed appropriate by the Office Director, including but not limited to the following:

(i) For a capture from the wild, the permit holder must provide the Office Director with 15 days notice in advance of the actual date(s) and location of the capture authorized by the permit to allow for the presence of an NMFS observer, if requested by the Office Director.

(ii) The importation of marine mammals is subject to the provisions of 50 CFR part 14. No marine mammal may be imported without the permits required under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Information regarding CITES permits may be obtained from the U.S. Fish and Wildlife Service.

(iii) The permit holder must provide the Office Director with at least 15 days notice in advance of the actual date, time, and port of entry for imports.

(iv) In the case of imports, marine mammals must be transported from the foreign facility to the United States in

accordance with the U.S. Department of Agriculture's Transportation Standards outlined in 9 CFR subpart E. Ports of entry for imports of marine mammals or marine mammal parts are listed in § 216.50 (a) through (d).

(v) For any subsequent transfer and/or transport, or export of the subject marine mammal, the permit holder and receiver must comply with the notification and certification requirements of § 216.43 (d) or § 216.43 (f), as appropriate.

(vi) Progeny of marine mammals imported into the United States are subject to MMPA reporting and transfer notification requirements. The permit holder and any subsequent holder of captive marine mammals must report births, deaths, and any transfer according to the notification and reporting provisions of § 216.43 (e).

(vii) The permit holder may hold a marine mammal captured from the wild in a temporary facility, including a facility not licensed by APHIS, for the purpose of acclimation for a period not greater than 6 months provided:

(A) The holding facility's sole purpose is the acclimation of marine mammals captured from the wild, and

(B) The temporary holding facility meets all applicable AWA standards.

(viii) The terms and conditions of a public display permit are effective as long as the permit holder maintains custody of the marine mammal authorized to be captured from the wild or imported.

(6) *Permit reports.* In addition to the notification and reporting requirements under § 216.38 and § 216.43 (e), all permit holders are subject to the following reporting requirements:

(i) *Collection reports.* Permit holders must submit a collection report within 30 days of the capture of a marine mammal authorized under a public display permit. The collection report must describe:

(A) The name of the individual who captured the marine mammal(s) and other personnel involved in the capture activities;

(B) The method of taking for each marine mammal, including the gear used;

(C) The specific date, time and location of the taking, including latitude and longitude and geographical location;

(D) Any problems, injuries or complications that may have occurred during the collection,

(E) The taking of any other marine mammals, including by harassment, that occurred during the collection;

(F) Any lethal takes which occurred in connection with the capture,

including the date, time, location, number, and to the extent possible, the age, sex and reproductive condition of the marine mammal(s);

(G) A description of each marine mammal retained by the permit holder in accordance with the marine mammal inventory requirements of § 216.43 (e)(3); and

(H) Any other information that the Office Director may require in the permit.

(ii) *Verification of import.* Within 30 days of an import, the permit holder must verify the importation into the United States of the living marine mammal identified in the permit by submitting updated inventory information in accordance with the inventory requirements of § 216.43 (e)(2).

(c) *Re-export of marine mammals imported into the United States.* (1) Holders of marine mammals imported into the United States under the authority of a public display permit may re-export these marine mammals without the foreign certifications specified in § 216.43 (f)(4)(i) through (iii), provided the marine mammal is returning to the original foreign holder and foreign facility.

(2) Marine mammals re-exported under paragraph (c)(1) of this section are no longer subject to the MMPA transfer notification or reporting requirements.

(3) A holder exporting the U.S. born progeny of the marine mammals identified in paragraph (c)(1) of this section must comply with the MMPA transfer notification and reporting requirements under § 216.43(e) and any export requirement under CITES.

(4) The re-export of a marine mammal to a different holder or facility must conform to the export requirements under § 216.43 (f).

(5) Once a marine mammal is re-exported, the permit holder may not re-import the subject marine mammal unless a new permit to import has been issued by the Office Director pursuant to § 216.43 (b).

(d) *Transfer and/or transport of captive marine mammals within the United States—*Transfer and/or transport of marine mammals legally held for public display within the U.S. does not require a permit provided that the receiver complies with the public display requirements of § 216.43 (b)(3)(i) through (iii), and both holder and receiver comply with the notification requirements of § 216.43 (e). Upon satisfaction of these requirements:

(1) A holder may:

(i) Transfer a marine mammal without physically transporting the marine

mammal to another facility/physical location;

(ii) Transport a marine mammal from one facility/physical location to another without transfer, including for purposes of a breeding loan; or

(iii) Transfer a marine mammal and physically transport the marine mammal to another facility/physical location.

(2) A receiver may:

(i) Purchase or otherwise acquire a marine mammal through a transfer without physically transporting the marine mammal from another facility/physical location;

(ii) Transport or receive a marine mammal from one facility or physical location to another without transfer, including for purposes of a breeding loan; or

(iii) Purchase or otherwise acquire an interest in a marine mammal through a transfer, and physically transport the marine mammal from another facility/physical location.

(e) *Notifications and reporting.* Any holder of a marine mammal must comply with the following notification and reporting requirements. If either the holder or receiver fail to meet the public display and/or notification requirements of § 216.43 (b)(3)(i) through (iii) and § 216.43 (e) the conditional right to transfer or transport marine mammals may not be invoked. Holders may obtain complete information regarding submission procedures and reporting from the Permits Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910 or NMFS Marine Mammal Inventory c/o International Species Information System, 12101 Johnny Cake Ridge Road, Apple Valley, MN 55124 8151.

(1) *Fifteen-day notification of transfers/transport of captive marine mammals.* Except as provided in paragraph (e)(3) of this section, the Office Director must receive written notification at least 15 days in advance of any transfer or transport of captive marine mammals held for public display purposes. Holders may submit a Marine Mammal Transport Notification (MMTN) by facsimile, provided the original is forwarded to the Office Director by certified mail within 3 business days. Notification must be provided in the following manner:

(i) The holder and receiver must submit a completed MMTN together with a supporting Marine Mammal Data Sheet (MMDS) for each marine mammal to be transferred. A completed MMTN includes a MMDS for each animal proposed for transfer and/or transport and a certification signed by both the holder and the receiver which provides

that the receiver and/or receiving facility meets the requirements of paragraphs (b)(3)(i) through (iii) of this section.

(ii) In the case of traveling exhibits, the holder must notify the Office Director at least 15 days in advance of each transport from one location to another, unless the Office Director has approved an alternative notification schedule.

(iii) In cases involving the transport of a marine mammal for a school visit or similar outreach event in which the marine mammal will be returning to the original holding facility more than 12 hours after departure, the holder must comply with the 15-day notification requirement. In the absence of 15 days advance notice, the holder must request a transport authorization pursuant to paragraph (e)(3)(i) of this section.

(iv) Upon receipt of a MMTN, the Office Director will acknowledge receipt of the notification and enter the proposed transfer and/or transport dates into the Marine Mammal Inventory database for those marine mammals identified in the MMTN.

(v) A new MMTN must be submitted if:

(A) Transfer and/or transport does not occur within 90 days of the proposed date;

(B) The receiver or facility changes; or

(C) Other animals will be transferred and/or transported.

(2) *Verification of receipt.* Receivers must provide verification within 30 days of the date of transfer and/or transport. Verifications must include a revised MMDS for each marine mammal, indicating the actual date of transfer and/or arrival, the animal name and number assigned by the receiver, and the 8-digit identification number assigned by NMFS. If the holder does not verify the transfer and/or transport or notify the Office Director of a cancellation, the proposed action will be subject to deletion from the inventory database after 90 days.

(3) *Special authorizations*—(i) A holder may receive authorization from the Office Director to transfer and/or transport, but not export, captive marine mammals with less than 15 days advance notification prior to transfer or transport, if the holder and proposed receiver submit a written request for such a transfer and/or transport authorization to the Office Director that includes:

(A) An explanation why the transfer and/or transport must be conducted in less than 15 days,

(B) A completed and signed MMTN, NOAA Form 89–881, and

(C) a MMDS, NOAA Form 89–882, for each affected marine mammal.

(ii) A holder may transfer and/or transport, but may not export, a captive marine mammal without 15 days advance notification or the Office Director's written authorization in the case of an emergency involving the imminent and serious jeopardy to the health or welfare of the marine mammal, provided that within 24 hours of an emergency transfer and/or transport, the holder or the holder's attending veterinarian submits to the Office Director:

(A) A written explanation of the emergency circumstances and justification for the transfer and/or transport, and

(B) A MMDS for each affected marine mammal.

(iii) Upon resolution of the emergency, the holder must notify the Office Director of the subsequent return of the marine mammal to the holder's facility or transfer and/or transport to another facility.

(iv) The Office Director may periodically review emergency transfers and/or transports conducted under the provisions of paragraphs (e)(3)(i) and (ii) of this section. If the Office Director determines that there is a reasonable basis for questioning whether a holder has abused the emergency transfer/transport allowance, the Office Director may notify a holder:

(A) That they are not authorized to conduct emergency transfers or transports; or

(B) Of the conditions under which subsequent emergency transfers/transports may be conducted; and

(C) What steps the holder may take to remove the restrictions imposed under paragraph (e)(3)(iv)(A) or (B) of this section.

(4) *Marine mammal inventory.* The Office Director maintains a computerized Marine Mammal Inventory database of all captive marine mammals subject to the MMPA. To enable the Office Director to maintain this inventory, holders of captive marine mammals must provide an updated MMDS to the Office Director whenever a change in inventory occurs. To satisfy the 30-day requirement for reporting births, deaths, transfers or other changes in inventory, holders must submit by mail or facsimile written reports on a MMDS to the Office Director. The Office Director will not accept telephone notification. This updated MMDS must include:

(i) The name or other identification of the marine mammal involved;

(ii) Its sex;

(iii) Its actual or estimated birth date;

(iv) The date of the holder's acquisition or disposition of the marine mammal;

(v) The source from which the marine mammal was acquired including the location of the stranding or take from the wild, if applicable;

(vi) If a marine mammal is being transferred and/or transported, the name and street address of the receiver and/or receiving facility and the operator of that facility if other than the current holder of the marine mammals being transferred and/or transported; and

(vii) If a marine mammal dies, including stillbirths and animals that undergo euthanasia, the holder must notify the Office Director within 30 days of the date of death. Notification must include the date and cause of death. If the cause of death has not been determined within 30 days, holders must submit an amended notification once the cause of death is determined. A reasonable effort to determine the cause of death must be made by the holder.

(viii) If a marine mammal escapes from a facility or is inadvertently released it must be reported immediately by phone or fax to the Office Director. A status report on the recovery effort and the conditions of escape is required within one week of the event. An updated MMDS noting the escape or release is required within 30 days. The holder must report the results of all reasonable efforts to recapture the marine mammal within 6 months of the escape or release.

(5) *Marine Mammal Inventory Report-Summary (MMIRS) by holder/species.* Upon request of the Office Director, holders of marine mammals subject to the MMPA must review, verify, and correct any discrepancies regarding the marine mammals in their custody and listed in the Marine Mammal Inventory database. Holders may obtain information about the marine mammals listed on their inventory and request a MMIRS for the marine mammals in their collection at any time by sending a request to the NMFS Marine Mammal Inventory at the address listed in paragraph (e)(8) of this section.

(6) *Change of address or trade name.* Holders must notify the Office Director by certified mail 15 days in advance of any change in name, address or ownership. An updated Person/Holder/Facility Sheet, NOAA Form 89–871, should accompany the holder's notification.

(7) *Eligibility.* Holders must notify the Office Director immediately of any other change in operations that adversely affects the holder's ability to meet the criteria set forth in § 216.43 (b)(3),

including but not limited to the expiration, suspension, revocation, or any APHIS registration or license, or voluntary termination upon request of the holder or licensee.

(8) *Submission address.* Effective (30 days after publication of the final rule in the **Federal Register**), all transfer and transport notifications and inventory reports must be submitted to NMFS Marine Mammal Inventory, c/o International Species Information System (ISIS), 1201 Johnny Cake Ridge Road, Apple Valley, MN 55124-8151. Notifications of releases or escapes of marine mammals, collection reports, requests for waivers of the 15-day advance notification requirement, changes in eligibility to hold marine mammals, export notifications, and foreign government certifications, must continue to be provided to the Office Director as specified in § 216.43 (e)(1)(iii), (3), (4)(viii), and (7), and § 216.43 (f).

(f) *Export of captive marine mammals.* Marine mammals may be exported under the authority of this section only for public display. Export of marine mammals legally held for public display within the U.S. does not require a permit provided that the receiver complies with the public display requirements of § 216.43 (b)(3)(i) through (iii), and both holder and receiver comply with the requirements of this section.

(1) Holders intending to export marine mammals to a foreign holder or facility for public display purposes must follow the notification requirements at § 216.43 (e) and ensure the documentation required in paragraphs (f)(3) through (6) of this section is submitted to the Office Director, together with a copy of any export permit required under CITES, at least 15 days in advance of the proposed export.

(2) Persons intending to receive marine mammals for public display by export from the United States must meet the public display criteria at § 216.43 (b)(3)(i) through (iii) and § 216.43 (f)(1). To ensure compliance with this requirement, persons intending to receive marine mammals must submit to the Office Director, pursuant to § 216.43 (f)(4), the following:

(i) A description of their program for education or conservation and identification of the professionally recognized standards upon which their education program is based;

(ii) A letter from APHIS certifying that:

(A) The receiving facility meets standards comparable to those applicable to U.S. licensees and registrants under the AWA, 7 U.S.C. 2131 *et seq.*;

(B) The transportation arrangements between the port of entry and the foreign facility comply with the AWA transportation standards at 9 CFR 3.112 through 3.118; and

(C) If the export does not occur within 1 year of the certification, a new letter from APHIS must be provided. For evaluation under the AWA, persons intending to import marine mammals from the United States should contact APHIS, U.S. Department of Agriculture, Riverdale, MD.

(iii) The name and mailing address of the foreign receiver, the name and street address of the facility where the marine mammals will be maintained, the hours during which the facility is open to the public, and the cost of admission.

(iv) If the foreign receiver maintains more than one public display facility and the marine mammals will be transported among these facilities, the receiver must provide the documentation requested in paragraphs (f)(2)(i) through (iii) of this section for each of the facilities, including a Person/Holder/Facility Sheet, NOAA Form 89-871, for each facility.

(v) If the foreign receiver will lease the marine mammals to a public display facility maintained by any person other than the receiver, the receiver must provide, in addition to the documentation requested in paragraphs (f)(2)(i) through (iii) of this section, a letter from the head of the facility certifying that the facility meets comparable standards under the AWA for the term of the contract.

(4) At least 15 days in advance of any proposed export of a marine mammal from the United States for public display, the Office Director must receive a statement from an appropriate agency of the government of the country where the foreign receiver/facility is located certifying that:

(i) The information submitted by the foreign receiver/facility is accurate;

(ii) The laws and regulations of the foreign government involved permit that government to enforce requirements equivalent to the requirements of the U.S. Marine Mammal Protection Act and U.S. Animal Welfare Act. The foreign government will enforce such requirements, and take protective measures where necessary for marine

mammals exported from the United States; and

(5) If the foreign receiver has submitted a government certification as specified in paragraphs (f)(4)(i) through (iii) of this section to the Office Director within the 1-year period leading to the export, the foreign recipient need only submit re-certification of accuracy as required by paragraph (f)(4)(i) of this section.

(6) Documentation, including government certifications submitted under this section, must be provided in English or be accompanied by a certified English translation.

(7) Marine mammals held for public display by U.S. holders that are exported but not transferred may be imported back into the U.S. by the holder without additional MMPA permits, provided all other requirements are met, including appropriate CITES export authorization from the foreign government.

(g) *Seizure of captive marine mammals.* (1) Marine mammals held for public display are subject to seizure under the following circumstances:

(i) The holder does not offer, and is not reasonably likely to offer in the near future, a program for education or conservation purposes that is based upon professionally recognized standards of the public display community;

(ii) The holder does not maintain, and is not reasonably likely to maintain in the near future, facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis, with access not limited or restricted other than the charge of an admission fee;

(iii) The Office Director, with the concurrence of the Secretary of Agriculture, determines that the holder does not possess, and is not reasonably likely to possess in the near future, a registration or license issued pursuant to the Animal Welfare Act (AWA). For purposes of this subparagraph, marine mammals may be subject to seizure upon the expiration, suspension, revocation, or notice of intent to suspend or revoke any registration or license issued by the Secretary of Agriculture.

(2) The holder shall reimburse the Secretary for any costs associated with the seizure of a marine mammal that occurs under paragraph (g)(1) of this section.

TABLE 1 TO § 216.43. SUBMISSION SCHEDULE

Time	Location	
	NMFS (MD)	NMFS c/o ISIS (MN)
Permit Application: At least 90 days in advance	X	
Application Amendment: At least 90 days in advance	X	
Collection Report: Within 30 days	X	
Birth and Death Reports: Within 30 days		X
Other Marine Mammal Inventory Updates: As requested by OD		X
Domestic Transfer Notifications: At least 15 days in advance		X
Export Notifications: At least 15 days in advance	X	
Foreign Government Certifications: At least 15 days in advance	X	
Transfer/Export Verifications: Within 30 days		X
Transfer Authorization Requests: Less than 15 days in advance	X	
Traveling Exhibitor's Transfer Notifications: 15 days in advance unless otherwise arranged with OD	X	
Address/Trade Name Changes: Within 15 business days		X
Termination of Exhibitor's License/Registration: Immediately	X	

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