

National Marine Fisheries Service

Marine Mammal Commercial or
Educational Photography

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NATIONAL MARINE FISHERIES SERVICE

MARINE MAMMAL COMMERCIAL OR EDUCATIONAL
PHOTOGRAPHY

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Introduction

Background

- Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed. We provide the above interim guidance for photography permit applications. This guidance is similar to that required for the General Authorization (GA) because the level of harassment authorized under photography permits and the GA is the same.

What is this permit for?

- Photography/filming of wild marine mammals for educational or commercial purposes where the activities will not exceed Level B harassment¹
- Discrete projects and time frames that will result in products such as documentary films, magazine articles, or commercial photographs

What is this permit not for?

- Photography focused on or that may affect marine mammals listed as endangered or threatened under the Endangered Species Act (ESA). For a list of ESA species, go here: <http://www.nmfs.noaa.gov/pr/species/esa/listed.htm>
- Photography that may result in Level A harassment
- Photography to collect stock images for an undetermined project. You must be working on a specific project that will result in a publicly available product.
- Scientific research on marine mammals

What if I want to film/photograph endangered or threatened species?

- Contact the National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division at 301-427-8401 for your non-permit options.

When should I apply?

- At least 4 months before your project will begin, preferably 6 months prior.

What is the process for getting a permit?

1. Follow these instructions and contact the Permits and Conservation Division at 301-427-8401 with any questions.
2. Submit your application via APPS (<https://apps.nmfs.noaa.gov/>)
 - a. An assigned permit analyst will contact you and review the application.

¹ **Harassment:** Under the 1994 Amendments to the MMPA, harassment is statutorily defined as, any act of pursuit, torment, or annoyance which—

(Level A harassment) has the potential to injure a marine mammal or marine mammal stock in the wild; or, **(Level B harassment)** has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

3. Address any questions on the application. To facilitate processing, reference the application File No. in all correspondence.
 - a. Once complete, we will publish a notice in the [Federal Register](#), which starts a mandatory 30-day public comment period.
 - b. Concurrently, we will send your application to the Marine Mammal Commission and other subject matter experts in partner institutions and federal and state agencies for review.
 - c. If needed, we will also request consultation under section 7 of the ESA to assess impacts to ESA-listed species. The ESA consultation can take up to 6 months.
4. Address any questions received during the comment period and consultation.
 - a. We will then draft the permit and supporting documentation (including National Environmental Policy Act analyses and documentation of MMPA and ESA issuance criteria), which will be reviewed by various NMFS offices including a legal review by General Counsel.
 - b. A Biological Opinion will be issued if ESA-listed species may be taken and adversely affected to determine if the activity will jeopardize the species or adversely modify critical habitat.
 - c. The Office Director will make a final decision.

Important information

- If you do not follow these instructions, your application will be withdrawn and you will be asked to resubmit a new application that includes the information required.
- If we request additional information and do not receive it within 60 days, we may withdraw your application.
- Your permit may only authorize what is in your application; therefore, it must be a stand-alone document that describes all proposed activities even when you reference previous permits or published literature.
- When a question does not apply (i.e., N/A), explain why.
- Your application should be free of grammatical errors and readable to a lay person.
- You are highly encouraged to contact us at 301-427-8401 with questions in advance of submitting your application.

How do I use APPS?

- Refer to [Chapter 2](#) (“How to Use the System”).
- When starting from your portfolio, click on the link of your file number under the File Number column to take you to the application.
- **Save your application every 20 minutes or you will lose information!**

- You do not have to complete an application in one session. Your application will remain in draft mode until you submit.
- An * means it is a required field.
- If you cut and paste from Word, special characters and formatting may be lost.
- Attachments cannot be larger than 10MB – contact us if you have larger files.

Questions?

- Contact our office at 301-427-8401

Application Instructions

Project Information

File Number

- This number is automatically generated by APPS and cannot be changed. Use this number in correspondence about your application.

****Project Title*** (up to 255 characters)

- Describe the project as concisely to include the activity, species (or taxa if multiple species), location, and purpose of filming. For example:
 - *Filming bottlenose dolphin feeding behavior in south Florida for a television series.*

****Project Status***

- Project status (“New” or “Renewal”) is automatically selected based on your answers in the pre-application guide (PAG). Do not change this field.

Previous Federal or state permit #

- If applicable, enter your most recent and closely related NMFS permit or LOC number. State permit numbers are not applicable.

****Permits Requested***

- MMPA Commercial/Educational Photography permit will be listed based on your answers in the PAG. If other options are listed, please call the Permits Division at 301-427-8401 for assistance.

****Where will the activities occur?***

- One or more general locations will be listed based on your answers in the PAG. If a location is incorrect, please call the Permits Division at 301-427-8401 for assistance.

****Timeframe***

- Enter the proposed start and end dates of the entire photography/filming project in the following format: MM/DD/YYYY.

- The start date must not be prior to the date you successfully submit the application and should be at least 4-6 months after the submission date.
- The end date must be within five years of the start date because permits are valid for a maximum of five years.

***Sampling Season/Project Duration** (up to 1,000 characters)

- Describe your filming field season(s) including the months and frequency of your time in the field (i.e., when and how many times per year/how frequently will you be filming?).

***Abstract** (up to 2,000 characters)

- Federal regulations require the following information be published in the *Federal Register* Notice of Receipt that initiates a mandatory 30-day public comment period:
 - Purpose of the filming/photography
 - Target and non-target species (common and scientific names)
 - Take activities (e.g., boat and aerial-based filming)
 - Numbers of animals to be taken or imported/exported or number of animals from which specimens will be imported/exported, by species or taxa, annually
 - Specific geographic locations
 - Requested duration of the permit (the maximum is five years)

Project Description

***Project Purpose: Hypothesis/Objectives and Justification** (up to 64,000 characters)

- Describe the objectives and significance of your project.
- Explain how and when the products will be made available to the public.
- Explain how you determined your take numbers. For example, did you base your numbers on previous encounter rates or abundance estimates for your study area?

***Project Description** (up to 64,000 characters)

- **Methods:** Provide clear descriptions of all take methods/procedures for each species, and the number of animals by age class² and sex you expect to take by each method/procedure annually.
- If working with lactating females and dependent calves or pups, indicate their minimum age and specific protocols for working around them, and how you will avoid harassment that could result in calf/pup abandonment or injury.
- There should be a narrative description for each take action and procedure in the take table, and vice versa. Further, the take requests in the narrative must match those in the take table.

² Define how age classes (e.g., neonate, calf/pup, juvenile, subadult, adult) are distinguished, by taxa or species.

- Include the purpose of each take activity (i.e., how the take activities relate to meeting your objectives).
- Figures and photographs are useful to illustrate your methods. You can attach them on the Supplemental Information page.
- Cite references for the methods where applicable, but do not substitute a literature citation in lieu of a complete description of the methods.
- See table below for examples of information to include when describing your methods.

Take action/ procedures	Details to include in methods
Manned aerial and vessel surveys	<ul style="list-style-type: none"> -Type of air craft and vessel -Type of survey -Number of surveys per year -Minimum and maximum altitude/approach distance -Air/vessel speed -Protocols for breaking track to photograph/film species -Duration spent with group or individual/day
Unmanned aircraft systems (UAS)	<p>Same general questions above for aerial surveys and also the following:</p> <ul style="list-style-type: none"> -Type of UAS – fixed wing or vertical takeoff and landing (VTOL) -Payload components – what is the UAS carrying? -Will the UAS ever be beyond the line of sight? -Does the device have an auto-return feature should the device fail? -Ground control station (where is it located - on shore or on vessel, number of stations, and how close the station will be to animals) -Spotter roles needed (e.g., one spotter monitoring the UAS, another for monitoring the ground control station) -Battery life -Do you have the appropriate FAA permits/authorizations (including pilot licenses)?
Filming and photography	<ul style="list-style-type: none"> -Approach method -Filming/photography equipment and method -Minimum and maximum approach distance -Within sight of animals or not (e.g., from a blind)? -Frequency of filming -Number of approaches per animal/day -Duration of filming/day -If conducting underwater photography/videography, specify the method (e.g., snorkeling, underwater pole cam, or divers that could use typical gear or rebreathers) and number of individuals in the water at a given time

- **Behavioral Responses/Mitigation:** For each method, describe the anticipated responses (severity and duration of harassment) and the mitigation measures you use to minimize those responses. If your activities coincide with reproductive seasons or maternal care, how will you avoid disruption of these sensitive biological periods and ensure mother-calf/pup pairs are not disrupted? Explain how your filming will not exceed Level B harassment.
- **Non-target species and conspecifics:** Include a list of non-target species that may be encountered in your study area and whether they will be harassed and what you will do to minimize harassment.
 - Photography permits cannot authorize you to take threatened or endangered species. If ESA-listed species occur in your study area, explain how you will avoid them (e.g., not in area during time of study; would not approach closer than 100 meters; would halt operations until non-target species moved out of study area).
 - If takes to non-target, non-ESA listed marine mammals may occur, include these on separate rows in the Take Table to include incidental harassment of non-target conspecifics or other marine mammals.
- **Coordination:** Describe how you collaborate or coordinate with filmmakers or researchers in your action area, and who they are.

Project Supplemental Information

Attach a Supplemental Information File

- You can attach files to provide additional information. You can attach a map on the Location screen.

Project Locations and Take Information

- You will first describe where you plan to work. Then, for each location, you will use the Take Table to list the species you expect to encounter and the take procedures you will conduct.
- **Add New Location:** provide information about one (or more) study areas
 - General area (ocean basin)
 - State(s), as applicable.
- Enter **Location Details**, as applicable:
 - Waterbody: enter names of rivers, estuaries, bays, etc.
 - Latitude and longitude of your study area
 - River miles (Begin Mile and End Mile)
 - Limits of your study area (e.g., to the U.S. EEZ, to the edge of the continental shelf, to 50m depth)
 - Names of land masses where filming will occur (e.g., islands, rookeries).

- **Attach File:** Include high quality map(s) with the correct scale that clearly shows the location of your proposed activity and any environmental aspects of interest. If possible, include a shapefile, Google Earth kmz/kml, or ASCII text file with lat/long data and the associated basic metadata with your electronic application submission.

Take Table

The take table represents the **estimated** number of animals you may harass (take) **annually** during filming/photography.

The options that appear in the dropdown menus in the take table are based on the species group (marine mammals) you indicated in the PAG, the location that you have selected, and the fact that photography permits can only authorize Level B harassment. If you are having difficulties, please first check that the previous fields were entered correctly.

Columns you will fill out in the take table:

- 1) **Select:** Leave this box blank unless you need to copy, move, or delete the line following the instructions above.
- 2) **Species:** Use the drop down list to select. Species are listed alphabetically by common name and/or category (e.g., dolphin, bottlenose). If the species you are looking for is not on the drop-down menu, double check your location (species are populated based on location). If you are still having problems, contact the Permits Division at 301-427-8401.

Note: You will **not** have the option to select endangered or threatened species.

- 3) **Listing Unit/Stock:** Select the applicable stock. Choose Range-wide if, for example, your location has multiple stocks of the same species and you cannot distinguish between them while in the field.
- 4) **Production/Origin:** Select Wild from the drop-down list.
- 5) **Life Stage:** Select from the drop-down list. You may enter take information for more than one life stage (e.g., adult versus juvenile) on separate rows or select a combination of life stages for one take category.
- 6) **Sex:** Select from the drop-down list. If your activity targets only one sex, indicate which. If it targets both and they can be targeted separately, enter separate rows for male and female; otherwise select Male and Female.
- 7) **Expected Take:** This represents a reasonable estimate of the number of animals you will encounter, annually.

For cetaceans, you will count every animal you approach³ within a certain distance, regardless of whether a behavioral reaction has occurred.

- Only count 1 take per cetacean per day including all vessel approaches.
- During manned aerial surveys flown at an altitude lower than 1,000 ft, count 1 take per cetacean observed per day, regardless of the number of passes over the same animal.
- During Unmanned Aircraft System (UAS) surveys, count 1 take per cetacean approached per day, regardless of the number of passes.

For pinnipeds, you will only count 1 take per pinniped per day for those that show movement⁴ or flushing⁵ (excluding alert⁶) to an approach or other permitted activity, regardless of the number of approaches and behavioral responses of the same individual in a day. In the description of methods (above), indicate the number of approaches per animal per procedure per day needed.

- 8) **Takes Per Animal:** Estimate the number of times the same identifiable individual will be encountered, annually, if known. If you are not certain the same individuals will be encountered, put 1.
- 9) **Take Action:** Select Harass.
- 10) **Observe/Collect Method:** Select the method of observation (e.g., survey, vessel). Select only one observe/collect method per row. If various methods will be used, you must provide take information in separate rows for each observe method.
- 11) **Procedures:** Provide specific information on the activities that will be conducted. A separate pop-up window will appear with a species-specific list of activities. Hold down the Control key to select all activities to be performed concurrently. Choose Other if your proposed activity is not listed. In the Details box (see below), briefly describe what the Other means.
- 12) **Begin Date:** Populated with the Begin Date you entered on the Project Information page. You may change the date to coincide with a specific project time shorter than the overall duration of the project. You cannot enter a date that is earlier than your original Begin Date.
- 13) **End Date:** Populated with the End Date you entered on the Project Information page. You may change the date to coincide with a specific project time shorter than the overall

³ An "approach" is defined as a continuous sequence of maneuvers involving a vessel, including drifting, directed toward a cetacean or group of cetaceans closer than 100 yards for baleen whales and 50 yards for all other cetaceans.

⁴ Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.

⁵ All retreats (flushes) to the water.

⁶ Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.

duration of the project. You cannot enter a date that is later than the End Date you previously entered.

- 14) **Details:** Enter up to 255 characters in this text box to provide details on each take table row.

National Environmental Policy Act (NEPA) Considerations

In addition to providing information on effects to the target and non-target species in other sections of the application, provide information as requested below on potential environmental effects to determine if your activity may be categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement under NEPA. If you believe any of the criteria are “not applicable” you must explain why.

- 1) If your activities will involve equipment or techniques that are new, untested, or otherwise have unknown or uncertain impacts on the biological or physical environment, please describe the equipment and techniques and provide any information about the use of these in the natural environment. In addition, please discuss the degree to which they are likely to be adopted by others for similar activities or applied more broadly.
- 2) Describe the physical characteristics of your project location, including:
 - a. Whether you will be working in or near unique geographic areas including but not limited to Critical Habitat for endangered or threatened species, Essential Fish Habitat, National Marine Sanctuaries, Marine Protected Areas, State or National Parks, Wilderness Areas, Wildlife Refuges, Wild and Scenic Rivers, etc.
 - b. Next, discuss how your activities could impact the physical environment in those locations, such as by direct alteration of substrate during use of anchoring vessels or buoys, erecting blinds or other structures, or ingress and egress of film crew, and measures you will take to minimize these impacts.
- 3) Briefly describe important scientific, cultural, or historic resources (e.g., archeological resources, animals used for subsistence, sites listed in or eligible for listing in the National Register of Historic Places) in your project area and discuss measures you will take to ensure your work does not cause loss or destruction of such resources. If your activity will target marine mammals in Alaska or Washington, discuss measures you will take to ensure your project does not adversely affect the availability (e.g., distribution, abundance) or suitability of these animals for subsistence uses.
- 4) Discuss whether your project involves activities known or suspected of introducing or spreading invasive species, intentionally or not, (e.g., discharging ballast water, use of boats/equipment at multiple sites). Describe measures you would take to prevent the possible introduction or spread of non-indigenous or invasive species, including plants, animals, microbes, or other biological agents.

Project Contacts

As the person entering the application, you will automatically be assigned the following roles: **Applicant/Permit Holder, Principal Investigator, and Primary Contact**. See Chapter 2 for directions on how to change who is assigned to these roles, and this table.

Project Contact	Must be named in the permit application	Able to make changes to application, request changes to the permit, and submit reports; will receive automatic emails from APPS.	Description of qualifications required
Applicant/Permit Holder	✓	✓	✓
Applicant or Responsible Party*	✓	✓	
Principal Investigator	✓	✓	✓
Primary Contact	✓	✓	
Co-Investigator	✓		✓
Filming Assistants			

* The Applicant/Responsible Party may also be the PI or a CI if participating; therefore, the description of qualifications is required if they are listed as the PI or a CI.

To prevent duplicate entries, **you MUST ALWAYS search the database for the person before entering a new contact**. To facilitate the search, start with only putting the last name in APPS search box.

A project must have a **Responsible Party** if the Applicant/Permit Holder is an organization, institution, or agency. The Responsible Party or Applicant/Permit Holder is an official who has the legal authority to bind the organization, institution, or agency and is ultimately responsible for the activities of any individual operating under the authority of the permit.

The **Principal Investigator (PI)** is the individual primarily responsible for the take and any related activities conducted under the permit. There can only be one PI on a permit. The PI:

- must have qualifications, knowledge and experience relevant to the activities authorized by the permit
- must be on site during activities conducted under the permit unless a Co-Investigator is present to act in place of the PI
- may also be the Applicant/Permit Holder and Primary Contact.

Co-investigators (CIs) are individuals who are qualified and authorized to conduct or directly supervise activities conducted under a permit without the on-site supervision of the PI.

- You may add CIs to the application if the PI will not always be present during the permitted activities.
- CIs can also be added or removed once a permit has been issued.

Include a table listing the names of the PI and CIs, and the specific procedures they will oversee or conduct. **Attach the table on the Supplemental Information page.**

Example Table Attachment: Personnel Roles

Name/Affiliation	Role	Activities
Filmmaker name, Affiliation, City, State	PI or CI	Specific activities they will conduct under the permit and whether they are supervising
John Smith, Company A, City, State	Principal Investigator	Supervise and perform all activities under the permit
Jane Doe, Company A, City, State	Co-Investigator	Conduct underwater videography

Qualifications and Experience

Federal Regulations require that persons authorized as the PI or CIs have qualifications commensurate with their duties. In addition, the names of the PI and CIs are sent to the NOAA Office of Law Enforcement to determine if any violations of the MMPA, ESA, and other environmental laws have occurred.

The permit applicant is therefore required to submit the following information about the qualifications and experience of the PI and all CIs to demonstrate they have qualifications commensurate with their duties as stipulated in the Personnel Table. **A CV or resume must be up to date and contain all relevant information below.** If sufficient experience is not provided, additional information will be required and the personnel will not be authorized to conduct the proposed activities unless sufficient experience is demonstrated

- 1) **Contact information** - All documentation submitted will be publicly available. **DO NOT include personal information** (e.g., social security number, date of birth, nationality, or home phone/ address-unless it is also the business phone/address).
 - Name (first middle last)
 - Business phone, e-mail, and mailing address
- 2) **Relevant education and training**
 - Degree, major, name of institution, year received
 - Applicable certificates or licenses, year received
 - Other relevant training or certification, year received
- 3) **Relevant experience**

- Job title, affiliation/location, and dates
 - Detailed description of when and how the individual obtained experience in the methods they will be conducting and/or supervising as outlined in the Personnel Table. This should include objective metrics such as:
 - The number of hours/months/years they have been performing the activities and with what species
 - Whether and to what extent they have performed them without supervision or have supervised the proposed activities
- 4) **List of grants awarded demonstrating available resources relevant to the proposed activities or history of securing resources for similar work**
- 5) **Annotated publication history relevant to the activities being conducted under the permit**

Submit Application

See Chapter 2 for how to submit your application and check on its status.

Additional Information

Under Section 104(c)(6)the Marine Mammal Protection Act (MMPA), a permit may be issued for photography of marine mammals in the wild for educational or commercial purposes where the photography activities do not exceed Level B harassment. Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed. MMPA section 104 is available at the following web site: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>.

Paperwork Reduction Act Statement

The information requested in this application is required and is used to determine whether the proposed activity is likely to exceed Level B harassment of a marine mammal in the wild, whether the photography methods are adequate to meet the project objectives, whether the applicants are qualified to carry out the proposed activities, and how the products of such activities will be made available to the public.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

The permit application and any associated documents, including any reports required under the permit, are considered public information and as such, are subject to the Freedom of Information 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

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