



MARINE MAMMAL COMMISSION

3 March 2025

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Re: Permit Application No. 28286
(SeaWorld, LLC)

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the above-referenced permit application with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). SeaWorld, LLC (SeaWorld) proposes to conduct research and enhancement activities on a captive Cook Inlet beluga whale during a five-year period—permit 22095 authorized similar activities.

The purpose of the proposed research is to investigate social behavior and to observe underwater behavior. Researchers would harass, observe, photograph/videotape, and conduct sonar imaging on the beluga whale. Proposed enhancement activities would include daily care and husbandry, veterinary care, behavioral observations, and enrichment. The research protocols will be reviewed by the SeaWorld Animal Research Use Committee prior to implementation.

Enhancement activities

The current permit and renewal application speak generally about the authorizations being sought. The application indicates that the activities to be covered are “[m]aintaining a non-releasable beluga whale (*Delphinapterus leucas*) from the Cook Inlet Distinct Population Segment (DPS) for research and enhancement” under the joint authorities of the MMPA and ESA. Greater clarity is provided in the discussion of enhancement objectives, which states that “[a]s Tyonek was removed from the wild under an ESA Section 10(a)(1)(A) enhancement permit and MMPA Section 109h/112c take authority, we propose to continue his captive care as a non-releasable rehabilitated marine mammal under the same authorities.”

The distinctions about what is being authorized under each of the two statutes should be explicit, with the permit clearly describing what activities are being authorized and under which provisions of the two applicable statutes. That is, any new permit should indicate that “enhancement activities” are being authorized solely under section 10(a)(1)(A) of the ESA and not section 104(c)(4) of the MMPA. In response to the broad application of the enhancement permit authority under the

ESA, which had been used to authorize long-term maintenance and public display of listed species and trophy hunting, Congress drew the MMPA enhancement permit authority much more narrowly, particularly when captive maintenance is proposed. Clearly, maintenance of a non-releasable marine mammal, by itself, does not meet the issuance criteria for an enhancement permit under the MMPA. As such, the Commission recommends that NMFS specify in the table headers of the permit, if issued, that (1) section 104(c)(3) of the MMPA and section 10(a)(1)(A) of the ESA authorize the research activities in Take Table 1 and (2) section 109(h) and 112(c) of the MMPA and section 10(a)(1)(A) of the ESA authorize the captive maintenance and enhancement activities in Take Table 2, similar to SeaWorld's current permit.

Captive breeding

The application states that “Tyonek is currently not integrated [in the] breeding plan due to not [being] of breeding age. Once sexual maturity is reached SeaWorld is willing to have Tyonek participate in a captive breeding program that is consistent with recommended practices.” This information is ambiguous and could suggest that the facility may (1) not intend to breed the animal at all, (2) may seek a permit to include the animal in its captive breeding program at some later date, or (3) believe that captive breeding would be allowed once the animal reaches maturity and that no further authorization is needed. The Commission considers this to be an important element of the permit and recommends that NMFS clarify whether captive breeding is allowed and, if not, what additional authorizations would be needed if SeaWorld decides to pursue this option.

Tyonek stranded in Cook Inlet in September 2017 as a young calf and underwent initial rescue and rehabilitation at Alaska SeaLife Center. In January 2018, NMFS concurred with that facility's attending veterinarian that the whale was non-releasable and sought his placement at another facility for long-term maintenance. The following month, NMFS selected SeaWorld of Texas to hold the whale, specifying that the facility would abide by the conditions of the “MMHSRP permit and...apply for authorization under the MMPA and ESA for the long-term care of this non-releasable beluga whale calf.”

Section 104(c)(7) of the MMPA governs permits for the long-term placement of non-releasable marine mammals. That provision directs NMFS to issue the appropriate permit to the facility authorized to possess such animals, provided the facility meets the issuance criteria for a public display, scientific research, and/or species enhancement permit under that subsection. However, since Tyonek is from the endangered/depleted Cook Inlet beluga whale population, issuance of a public display permit is not possible (see e.g., MMPA section 101(a)(3)(B)).

SeaWorld subsequently sought and was issued permit 22095 “for scientific and enhancement purposes.” The abstract included in the permit states that the “objectives of the permitted activities, as described in the application, are to conduct auditory research (investigations of vocalization and hearing development) on and provide long-term care for one non-releasable male beluga whale (*Delphinapterus leucas*) from the Cook Inlet distinct population segment (DPS).” NMFS extended the validity of the permit through 15 March 2025. This is the permit that SeaWorld is seeking to renew, albeit with modified research objectives.

Nothing in the current permit or the application suggests that SeaWorld is seeking authorization under either an MMPA research or enhancement permit to allow captive breeding of Tyonek. Captive breeding has been considered an element of public display programs authorized under MMPA permits for non-depleted species, but since this animal is from a depleted stock and a public display permit cannot be issued, this is not an alternative that needs to be analyzed further. Although it may be possible to structure a captive breeding program that meets the standards for obtaining a scientific research or species enhancement permit under section 104(c) of the MMPA, such authorization has not been requested and, because captive maintenance is involved, such a request would warrant heightened scrutiny.

To the extent that there is any ambiguity as to whether captive breeding is authorized under the permit, the Commission points to paragraph I.2. of permit 22095, which presumably will be carried forward in the new permit. That provision specifies that the Office of Protected Resources will be “the sole arbiter of whether a given activity is within the scope and bounds of the authorization...” The Commission recommends that NMFS exercise this authority and condition the permit, if issued, to (1) prohibit captive breeding of Tyonek and (2) require SeaWorld to take appropriate steps (e.g., physical separation, sterilization, etc.) to ensure that Tyonek does not breed once he reaches breeding age or displays breeding behavior, unless an amendment to the permit or a new permit is issued for captive breeding.

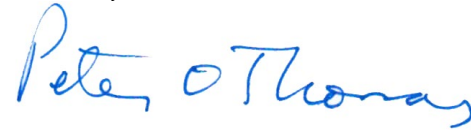
Additionally, the Commission recommends that NMFS clarify in its policies and guidance for administering the stranding program and/or in all relevant permits that captive breeding is not an activity authorized under section 109(h) of the MMPA. That provision is directed at short-term rescue and rehabilitation of stranded marine mammals, with the expectation that longer-term maintenance of most non-releasable animals will be transferred to some sort of permit. It is only because Tyonek is part of a depleted stock that continued authorization under section 109(h) and section 112(c) is necessary. Continued application of those provisions to care for depleted marine mammals that strand and are determined to be non-releasable may be the best available alternative under the MMPA, but should not be an authorization that is perpetuated to subsequent generations by allowing breeding of those animals.

The Commission believes that more detailed 112(c) agreements would help clarify any uncertainty regarding the activities that are authorized under section 109(h) of the MMPA. During its informal review of this application, the Commission was informed that the 112(c) authority for the captive maintenance of Tyonek is reflected in the permit take table and that there is not a separate 112(c) agreement between NMFS and SeaWorld. In contrast, NMFS issued a 10-page Cooperative Agreement in December 2022 authorizing the Alaska SeaLife Center to retain two stranded, non-releasable Arctic ringed seals for permanent care and maintenance under the authority of sections 109(h) and 112(c) of the MMPA. Thus, the Commission recommends that NMFS issue and append to any applicable issued permit a 112(c) Cooperative Agreement for all non-releasable marine mammals that are permanently maintained under sections 109(h) and 112(c) of the MMPA.

Ms. Jolie Harrison
3 March 2025
Page 4

The Commission believes that the proposed activities are consistent with the purposes and policies of the MMPA. Kindly contact me if you have any questions concerning the Commission's recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive style with a large initial "P" and a distinct "O" before "Thomas".

Peter O. Thomas, Ph.D.,
Executive Director