

public comment period, the Office Director will issue or deny a special exception permit.

(2) The decision to issue or deny a permit will be based upon:

(i) All relevant issuance criteria set forth at § 216.34;

(ii) All purpose-specific issuance criteria as appropriate set forth at § 216.41, § 216.42, and § 216.43;

(iii) All comments received or views solicited on the permit application; and

(iv) Any other information or data that the Office Director deems relevant.

(3) If the permit is issued, upon receipt, the holder must date and sign the permit, and return a copy of the original to the Office Director. The permit shall be effective upon the permit holder's signing of the permit. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director.

(4) Notice of the decision of the Office Director shall be published in the FEDERAL REGISTER within 10 days after the date of permit issuance or denial and shall indicate where copies of the permit, if issued, may be reviewed or obtained. If the permit issued involves marine mammals listed as endangered or threatened under the ESA, the notice shall include a finding by the Office Director that the permit:

(i) Was applied for in good faith;

(ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and

(iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.

(5) If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial.

(6) Under the MMPA, the Office Director may issue a permit for scientific research before the end of the public comment period if delaying issuance could result in injury to a species, stock, or individual, or in loss of unique research opportunities. The Of-

fice Director also may waive the 30-day comment period required under the ESA in an emergency situation where the health or life of an endangered or threatened marine mammal is threatened and no reasonable alternative is available. If a permit is issued under these circumstances, notice of such issuance before the end of the comment period shall be published in the FEDERAL REGISTER within 10 days of issuance.

(7) The applicant or any party opposed to a permit may seek judicial review of the terms and conditions of such permit or of a decision to deny such permit. Review may be obtained by filing a petition for review with the appropriate U.S. District Court as provided for by law.

[61 FR 21935, May 10, 1996]

#### § 216.34 Issuance criteria.

(a) For the Office Director to issue any permit under this subpart, the applicant must demonstrate that:

(1) The proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals;

(2) The proposed activity is consistent with all restrictions set forth at § 216.35 and any purpose-specific restrictions as appropriate set forth at § 216.41, § 216.42, and § 216.43;

(3) The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;

(4) The proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock;

(5) Whether the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application;

(6) If a live animal will be held captive or transported, the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal; and

(7) Any requested import or export will not likely result in the taking of marine mammals or marine mammal

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parts beyond those authorized by the permit.

(b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

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### §216.35 Permit restrictions.

The following restrictions shall apply to all permits issued under this subpart:

(a) The taking, importation, export, or other permitted activity involving marine mammals and marine mammal parts shall comply with the regulations of this subpart.

(b) The maximum period of any special exception permit issued, or any major amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of §216.39, the period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit.

(c) Except as provided for in §216.41(c)(1)(v), marine mammals or marine mammal parts imported under the authority of a permit must be taken or imported in a humane manner, and in compliance with the Acts and any applicable foreign law. Importation of marine mammals and marine mammal parts is subject to the provisions of 50 CFR part 14.

(d) The permit holder shall not take from the wild any marine mammal which at the time of taking is either unweaned or less than eight months old, or is a part of a mother-calf/pup pair, unless such take is specifically authorized in the conditions of the special exception permit. Additionally, the permit holder shall not import any marine mammal that is pregnant or lactating at the time of taking or import, or is unweaned or less than eight months old unless such import is specifically authorized in the conditions of the special exception permit.

(e) Captive marine mammals shall not be released into the wild unless specifically authorized by the Office Director under a scientific research or enhancement permit.

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(f) The permit holder is responsible for all activities of any individual who is operating under the authority of the permit;

(g) Individuals conducting activities authorized under the permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications;

(h) Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed when undertaking such activities;

(i) Special exception permits are not transferable or assignable to any other person, and a permit holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized under the subject permit;

(j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are placed for purposes of transit, supervision, or care. For marine mammals held captive and marine mammal parts in storage, a copy of the permit shall be kept on file in the holding or storage facility.

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### §216.36 Permit conditions.

(a) *Specific conditions.* (1) Permits issued under this subpart shall contain specific terms and conditions deemed appropriate by the Office Director, including, but not limited to:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which marine mammals may be taken according to type of take;

(iii) The location(s) in which the marine mammals may be taken, from