

operating on channel 35. The Petitioners request amendment of the Table of TV Allotments to substitute channel 11 for channel 35 and channel 35 for channel 36, respectively. The Petitioners filed comments in support of the Petition, as required by the Commission's rules (rules), reaffirming their interest in the proposed channel substitutions and that they will promptly file applications seeking authorizations on channels 11 and 35.

**DATES:** Effective December 12, 2024.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at [Joyce.Bernstein@fcc.gov](mailto:Joyce.Bernstein@fcc.gov).

**SUPPLEMENTARY INFORMATION:** The proposed rule was published at 89 FR 64851 on August 8, 2024. The Petitioners filed comments in support of the petition reaffirming their commitment to apply for channels 11 and 35.

The Bureau believes the public interest would be served by substituting channel 11 for channel 35 for KJTV-TV and channel 35 for channel 36 for KCBBD. Gray previously requested the substitution of channel 36 for channels 11 and the Bureau granted the request. Accordingly, channel 11 is no longer allotted to Lubbock in the Table. Gray was also granted a construction permit to construct a facility on channel 36 at Lubbock, but was unable complete construction of the channel facility by the expiration date. According to the Petitioners, KJTV-TV's channel 35 tube transmitter is failing, replacement parts are not available, and the cost for SagamoreHill to replace the transmitter for KJTV-TV's 1000 kW facility is prohibitively expensive. The Petitioners' proposal will allow SagamoreHill to replace KJTV-TV's failing equipment with the equipment (*i.e.*, antenna, transmitter, etc.) currently used by KCBBD on channel 11, which is in good operating condition. Because Gray had already planned to invest in a new 1000 kW transmitter for KCBBD on channel 36, it has the funds necessary to replace KJTV-TV's failing channel 35 transmitter and operate KCBBD on channel 35. There would be no predicted loss area on channel 35 when compared to KCBBD's previously-authorized channel 36 facility and the proposed channel 11 facility for KJTV-TV would result in no loss and instead provide additional service to approximately 8,000 persons. The Bureau finds that channel 11 can be substituted for channel 35 at Lubbock as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the

rules,<sup>1</sup> at coordinates 33°-32'-29.9" N and 101°-50'-13.6" W, and also meets the technical requirements set forth in section 73.622(a) of the rules. We also find that channel 35 can be substituted for channel 36 at Lubbock as proposed, in compliance with the principal community coverage requirements of section 73.618(a) of the rules, at coordinates 33°-30'-08.3" N and 101°-52'-21.3" W, and also meets the technical requirements set forth in section 73.622(a) of the rules.

This is a synopsis of the Commission's *Report and Order*, MB Docket No. 24-224; RM-11988; DA 24-1188, adopted and released on November 26, 2024. The full text of this document is available for download at <https://www.fcc.gov/edocs>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612, do not apply to this proceeding. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

**List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

**Final Rule**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICE**

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

<sup>1</sup>47 CFR 73.618(a).

■ 2. In § 73.622(j), amend the Table of TV Allotments, under Texas, by revising the entry for Lubbock to read as follows:

**§ 73.622 Digital television table of allotments.**

* * * * *	(j) * * * *
Community	Channel Nos.
* * * * *	* * * * *
<b>Texas</b>	
* * * * *	* * * * *
Lubbock .....	11, 16, *25, 27, 31, 35
* * * * *	* * * * *

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

[Docket No. 241126-0301]

**RIN 0648-BK65**

**Modification of the Duration of Certain Permits and Letters of Confirmation Under the Marine Mammal Protection Act**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS hereby modifies the regulations for Marine Mammal Protection Act (MMPA) section 104 permits, including scientific research, enhancement, photography, and public display permits and Letters of Confirmation (LOCs) under the General Authorization. The modification removes the 5-year regulatory limitation on the duration of section 104 permits and LOCs. This change gives NMFS the discretion to issue these permits for longer than 5 years, if such a duration is appropriate. This rule applies only to permits and LOCs issued under section 104 of the MMPA.

**DATES:** This rule is effective on January 13, 2025.

**FOR FURTHER INFORMATION CONTACT:** Sara Young or Carrie Hubard, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:**

### Authority for Action

Under section 104 of the MMPA (16 U.S.C. 1374), NMFS may issue permits for the take or importation of marine mammals for:

- Scientific research (section 104 (c)(3));
- Enhancing the survival or recovery of the species or stock (section 104 (c)(4));
- Public display (section 104 (c)(2));
- Commercial or educational photography (section 104(c)(6)); and
- Scientific research that may result only in taking by Level B harassment, via LOCs issued under the MMPA's General Authorization (GA) provisions (section 104 (c)(3)). Level B harassment refers to activities that have the potential to disturb but not injure a marine mammal.

The implementing regulations for scientific research, enhancement, public display, and photography permits can be found at 50 CFR 216.31–216.41. The implementing regulations for issuing LOCs under the GA can be found at 50 CFR 216.45. Applying for an LOC is a simpler and more expedited process than applying for a scientific research permit, and it does not require a public comment period. An LOC confirms that an applicant's proposed research activities will only result in Level B harassment (*i.e.*, activities with the potential to disturb but not injure) and will only target marine mammals that are not endangered or threatened under the Endangered Species Act (ESA). A scientific research permit is required for research that will result in take of ESA-listed species or for research that involves more than Level B harassment of marine mammals.

### Background

Section 2 of the MMPA, 16 U.S.C. 1361, provides that it is the sense of Congress that marine mammals “should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem.” Section 2 also includes Congress' finding that there is inadequate knowledge of the ecology and population dynamics of marine mammals. Since the MMPA was enacted in 1972, NMFS has issued permits to allow research on marine mammals as well as other permits and LOCs allowing take of marine mammals as specified in section 104.

Take, as defined in section 3 of the MMPA, 16 U.S.C. 1362, and in § 216.3,

means to harass, hunt, capture, collect, and kill marine mammals, or any attempt to do so. While all permits that are the subject of this rule authorize take of marine mammals, the majority of the take authorized under these permits is for low-level harassment of marine mammals or collection of biological samples rather than lethal take.

Section 104 permits like those described below authorize activities that promote the goals set out in section 2 of the MMPA. The vast majority of permits issued under section 104 (93 percent of current permits) authorize scientific research on marine mammals. Research permits cover a wide variety of projects, such as capturing, sampling, tagging, and releasing seals to find out how deep they dive, remotely biopsy sampling and tagging large whales to study their migrations, or conducting physiology studies on permanently captive marine mammals in academic facilities. In addition to fieldwork activities, some research permits authorize scientists to import and export marine mammal parts (*i.e.*, biological samples) to study topics such as disease, genetics, prey species, and hormones; and for curation in scientific collections. Some scientists have permits for both research and enhancement activities, such as vaccinating a wild endangered population against disease or maintaining endangered animals that cannot be released to the wild to contribute to the survival or recovery of the species. LOCs may be issued to researchers who study non-listed marine mammals and whose research methods may only result in low-level (*i.e.*, Level B) harassment. An example would be photographing bottlenose dolphins (*Tursiops truncatus*) to identify individuals and study distribution and social patterns. As scientists conduct permitted research, they expand our knowledge of the abundance, distribution, and health of these animals. Resource managers then use the best available science to inform their decisions.

Under section 104, NMFS also issues permits for commercial and educational photography of non-listed marine mammals. For example, a typical photography permit authorizes filming of marine mammals by underwater divers or from a vessel or drone to collect footage for a documentary. Filmmakers working under a commercial photography permit are restricted to activities that only have the potential to disturb (not physically contact, injure, or kill) marine mammals. Often the final product of these permits is a documentary television series or similar project that

may inspire awe and educate the public about marine mammals.

Additionally, NMFS also issues section 104 permits for the import of non-depleted and non-listed marine mammals for the purpose of public display. For example, a public display permit may authorize the import of dolphins from a foreign facility for public exhibition at a U.S. zoo or aquarium. These permits mandate a conservation or education program, as well as provide opportunities for the public to view marine mammals.

Section 104(b) of the MMPA requires that all permits specify “the period during which the permit is valid.” The MMPA does not limit how long section 104 permits or LOCs can be valid. Currently, there are regulatory limitations that prevent section 104 permits and LOCs from being valid longer than 5 years (§§ 216.35 and 216.45, respectively), with the provision for 1-year extensions (§§ 216.39 and 216.45, respectively). This rule removes the 5-year regulatory limitation on the duration of section 104 permits and LOCs. This will allow NMFS to issue section 104 permits and LOCs for longer than 5 years, as appropriate. Each permit will have an expiration date, tailored to the specific activities proposed by the applicant, which will be subject to public comment.

### Need for the Action

NMFS has been issuing marine mammal permits under section 104 for almost 50 years, and NMFS' implementing regulations have not been updated since 1996. Having issued MMPA permits since 1972, NMFS has a better understanding of marine mammal research and the effects of that research than when the 5-year restriction was promulgated in 1996. Based on decades of experience with the issuance of these permits and the activities conducted pursuant to them, NMFS believes a change is warranted to allow section 104 permits with durations greater than 5 years, in certain circumstances, as discussed below. As described in our comment responses below, NMFS routinely receives feedback from permit holders about the burden of the permit application process. Seventy-five percent of comments received in support of NMFS' proposed rule referenced the burden of the permit application process.

An important benefit of removing the 5-year restriction on permits is to make the MMPA permitting regulations consistent with those of the ESA. Many permits are issued under both the MMPA and ESA because the target species are marine mammals that are

listed as threatened or endangered, and thus protected under both statutes. Unlike the current MMPA regulations, the ESA section 10 permit regulations do not limit the number of years an ESA section 10(a)(1)(A) scientific research and enhancement permit may be valid (50 CFR part 222). Consistency between the MMPA and ESA permitting regulations with respect to permit duration will allow NMFS to issue joint MMPA-ESA permits with terms of longer than 5 years, if warranted. Since 2017, NMFS has been issuing 10-year ESA permits for scientific research and enhancement on species such as sawfish, sea turtles, and sturgeon, when such duration is warranted. NMFS will now be able to issue longer duration permits, if warranted, involving marine mammals, improving consistency and efficiency.

This rule provides greater flexibility and efficiency to permit and LOC applicants and the agency. Removing the limit on section 104 permit durations decreases how often researchers need to apply for a permit, thus decreasing the amount of time and effort required in reapplying to continue their research. As shown below, decades of permit data show that researchers tend to apply for multiple permits throughout their career. Lengthening permit duration where appropriate promotes efficiency and lessens the burden on our permit holders, while still providing the protections for marine mammals mandated by the MMPA.

As noted above, most section 104 permits are permits for scientific research, which results in data that informs management and conservation of marine mammal species. Rigorous studies of these long-lived species often require years, even decades, of data collection. Sixty percent of the current scientific research permit holders have had a permit for 20 or more years, meaning four or more permit cycles. Seventeen permit holders have held a permit for more than 40 years. Many researchers have dedicated their careers to conducting longitudinal studies. For example, one research group has been studying the population dynamics of Weddell seals (*Leptonychotes weddellii*) since 1968, while another scientist has been studying dolphins in Florida for over 50 years. NMFS science centers have held MMPA research permits since the enactment of the MMPA and continue to hold 13 permits today. The MMPA requires NMFS to conduct research to assess marine mammal populations, which typically requires scientific research permits. NMFS is also required to compile abundance and

distribution data on marine mammals and publish the findings as Stock Assessment Reports. These long-term research efforts, some of which are mandated by the MMPA, are examples of ongoing projects where a longer duration permit may be warranted.

Another example of a permit that may merit a longer time period is for permanently captive marine mammals maintained for the duration of their lives in academic facilities, zoos, and aquariums for research or enhancement purposes. Under this change in regulations, these permit holders might request a permit for longer than 5 years, and the agency may, in certain circumstances, depending on the specifics of the research or enhancement, issue a permit for a longer term. However, if an applicant proposes activities that are considered novel or are likely to be controversial, a shorter permit duration may be warranted.

The need for long-term research activities is expected to continue into the foreseeable future and permits or LOCs of longer than 5 years in duration may be appropriate in some instances. Regardless of the requested duration of research, all applications for permits or LOCs will include a proposed duration as well as a justification for this duration. All permits and LOCs issued will have definitive expiration dates.

Because NMFS has been issuing permits for decades, the effects of specific permitted activities on marine mammals, including particular research techniques, are well known and documented. Most research methodologies have become standardized over time. Permit holders tend to request and use the same techniques year after year because they are effective and create continuity across their long-term data sets. As a result, the impacts of their activities conducted under consecutive permits are often expected to be the same or similar. Historically, these section 104 permits have not raised significant public concern, as described below.

As required by statute, NMFS gives the public the opportunity to comment on all scientific research, enhancement, photography, and public display permit applications it processes, via notice in the **Federal Register**. Although NMFS receives infrequent input from the public, the agency takes all substantive public comments into consideration when making a decision on whether to grant a requested permit. All applications are evaluated to ensure the proposed activities are humane and that other required issuance criteria are met (see Implementation and Oversight section).

## Comments and Responses

On May 2, 2024, NMFS published a proposed rule in the **Federal Register** and requested comments from the public (89 FR 35769). On May 3, 2024, NMFS received a request for a 60-day extension of the public comment period from the Animal Welfare Institute (AWI). On June 3, 2024, NMFS announced a 15-day extension of the public comment period (89 FR 47508). During the 45 days of public comment, NMFS received 23 comment submissions, including comments from the Marine Mammal Commission (MMC), state, academic, and non-profit researchers, non-governmental organizations, and private citizens. All comments can be found at: <https://www.regulations.gov/document/NOAA-NMFS-2024-0054-0001>.

Twenty of the comments received expressed support for NMFS' proposed action. Commenters stated that the proposed change is positive and will improve efficiency in the permitting process. The majority of commenters said that the changes will decrease the burden on researchers, who must take time away from their research to reapply for a permit every 5 years. Some commenters, including permit holders with long-term experience applying for permits, used words such as "cumbersome" when describing the permit application process. Multiple researchers stated that the permit application process interferes with their ability to conduct field research or to apply for the grants that fund their research. One researcher said that allowing longer duration permits will save their program many weeks or months of time.

Multiple letters included comments on the expertise of the NMFS staff who review and process section 104 permits and LOCs, including several mentions of a thorough and organized application review process. Commenters expressed confidence in NMFS' ability to make decisions about the appropriateness of a particular permit duration, saying that NMFS staff have the necessary experience and perspective to do so. Multiple comments stated that annual reports will continue to hold permit holders accountable and be a useful tool to track compliance and indicate if any changes are needed.

Three commenters discussed the potential benefits of the proposed rule changes for permanently captive marine mammals held under scientific research or enhancement permits. These commenters mentioned that the current 5-year permit limit is a "regulatory burden" that does not comport with the

potential lifespan of marine mammals. The Alliance for Marine Mammal Parks and Aquariums (AMMPA) recommended that NMFS consider a permit duration that lasts for the life of permanently captive animals and pointed out that the facilities conducting captive research or enhancement activities on non-releasable marine mammals have agreed to cover potentially long-term, expensive medical care for the animals. The AMMPA and Association of Zoos and Aquariums supported NMFS' effort for increased consistency between MMPA and ESA permits, but the AMMPA cautioned against assigning arbitrary time limits to permit durations.

A comment submitted jointly from the Natural Science Collections Alliance and the Society for the Preservation of Natural History represents another type of permit holder, those curating scientific collections of marine mammal specimens. Their letter points out that, currently, natural history collections must re-apply every 5 years for a new permit to import, export, or receive parts even though, typically, there are no changes to research techniques, impacts to live animals, or activities that could negatively affect wild populations. The comment states that a longer permit duration could "support the longstanding role of collections as stable repositories and save scientific and administrative effort both for museum collections staff and for NOAA, without negatively impacting the important function that these permits serve in marine mammal protection."

Four commenters stated they support changing the MMPA permit durations to be in alignment with the ESA permit durations. As noted above, marine mammals listed under the ESA may also require permitting under ESA section 10(a)(1)(A) for scientific research or enhancement activities. The ESA and its applicable regulations do not limit the duration of such permits.

The MMC comment letter expressed general support of NMFS' proposed action but provided several comments about the implementation of the rule, which are addressed below.

Three comment letters explicitly disagreed with NMFS' proposal to remove the duration limit on section 104 permits and LOCs. Two of these comments did not contain substantive information and expressed general opposition to NMFS' proposed rule. The third comment letter, from AWI, contained substantive comments; summaries of the MMC and AWI's comments and NMFS' responses are provided below.

*Comment 1:* The MMC recommended that NMFS develop and consistently apply objective criteria for determining whether a longer duration permit or LOC is "justified and appropriate" and clearly communicate those criteria to permit holders and applicants. The MMC commented that clear criteria specifying when permit holders are eligible for a longer duration permit will (1) ensure consistency in duration determinations, (2) allow researchers to know whether their experience and proposed methods meet the criteria for a longer duration, and (3) improve reviewers' ability to assess whether a longer duration is warranted.

*Response 1:* As stated in the preamble to the proposed rule, in addition to consideration of the permit issuance criteria at § 216.34, NMFS will also consider whether the applicant has previously held a permit, and if so, whether they have successfully achieved their objectives. If an applicant proposes activities that are considered novel or are likely to be controversial, a shorter permit duration may be warranted. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement. NMFS will take into consideration the requested duration of the permit when determining if the applicant has met the applicable statutory and regulatory issuance criteria and restrictions (see Implementation and Oversight section). NMFS will further consider all comments received on a proposed permit application, including the proposed duration, prior to making a decision about permit issuance (except LOCs, which do not require a public comment period).

*Comment 2:* The MMC recommended that before this rule is finalized, NMFS should prioritize finalizing its draft of standard methods for marine mammal research (in the context of scientific research permits). The MMC also requested that NMFS provide the MMC with a timeline for when the standard methods will be available for review.

*Response 2:* At this time, NMFS has prioritized finalizing this rule because a proposed rule has already been published. There is greater potential for permitting efficiencies from finalizing this rule than halting the rulemaking to pursue standard methods. The standard methods framework is in a preliminary drafting phase and is not yet ready for public review and comment. While NMFS will continue to develop standard methods, the standard

methods initiative is not linked to the implementation of permit duration regulation changes. NMFS will keep the MMC, marine mammal researchers (*i.e.*, permit holders), and the public apprised of the status of the marine mammal standard methods.

*Comment 3:* The MMC emphasized that an accurate and complete application is essential for reviewers to determine whether the proposed duration is appropriate and justified. The MMC recommended that prior to publication of any application in the **Federal Register**, NMFS staff review each application in light of the applicable application instructions to ensure that all required information has been included, is consistent with NMFS's policies, and has been reviewed and deemed sufficient by relevant internal experts.

*Response 3:* NMFS reviews applications to ensure they meet the requirements of our application instructions, derived from the regulations for section 104 permit applications at 50 CFR 216.33 and the issuance criteria at § 216.34. NMFS' process follows a protocol whereby, prior to sending an application to the MMC, external reviewers, or the public, NMFS conducts a comprehensive review involving our relevant internal experts. This process will remain the same when reviewing applications for longer duration permits.

*Comment 4:* In anticipation of future changes to NMFS' acoustic thresholds for marine mammals, the MMC recommended that NMFS include a general condition in all permits or permit amendments involving active acoustics requiring permit holders to base their estimation of Level A and B harassment zones on NMFS's current thresholds at the time field work occurs rather than the thresholds in place when the permit was issued. More broadly, the MMC recommended that NMFS develop a plan to ensure that all future changes affecting research activities are communicated to longer duration permit holders and incorporated as permit conditions or through permit modifications. The MMC also recommended that NMFS should consider establishing new general conditions for all longer duration permits to address this issue and adopt outreach strategies to inform permit holders whenever relevant changes occur.

*Response 4:* As any changes to NMFS' acoustic thresholds have not been finalized, NMFS cannot speak to how any such changes to research permits would be implemented. Changes, such as new conditions, will be applicable to

all section 104 permits authorizing active acoustics, regardless of their duration.

NMFS already has mechanisms in place, such as permit contact emails, our online application system, and web pages, to disseminate relevant information to permit holders. Through NMFS' experience issuing permits for greater than 5 years for non-mammal ESA species, NMFS has found that the mechanisms currently in place are sufficient to manage longer duration permits and communicate necessary changes or updates to permit holders. NMFS will continue these efforts and consider additional outreach strategies for longer permits if the need arises.

*Comment 5:* AWI disagreed with the assertion that NMFS' prior experience issuing section 104 permits and LOCs justifies allowing permit durations of greater than 5 years.

*Response 5:* Because NMFS has been issuing section 104 permits and LOCs for decades, the effects of specific permitted activities on marine mammals, including particular research techniques, are well known and documented in the record. This allows NMFS to meaningfully assess whether a permit application, regardless of the applicant's requested duration, meets the necessary issuance criteria under the MMPA, and whether the requested duration is appropriate for the activity proposed. This record is coupled with NMFS' experience in issuing approximately 45 permits for greater than 5 years for non-mammal ESA-listed species since 2017. This history of ESA permit issuance for durations greater than 5 years demonstrates NMFS' ability to manage issuance and oversight of longer term permits. NMFS' review of incident and annual reports and use of adaptive management, for example through permit amendments, has ensured appropriate mitigation is incorporated into permits as warranted (see *Agency Oversight* section below).

*Comment 6:* AWI does not view reapplying for permits every 5 years, even for established research projects, to be overly burdensome for permit holders or the agency.

*Response 6:* As stated in the preamble to the proposed rule, the Paperwork Reduction Act (PRA) estimated number of burden hours to complete a scientific research permit application is 50 hours, with an estimated average hourly rate of \$32.58. Thus, an applicant for a scientific research permit will spend approximately \$3,258 and 100 hours to apply for two consecutive 5-year research permits. By removing the duration limit for section 104 permits, the number of burden hours and costs

to apply for a scientific research permit could be reduced, for example, to approximately \$1,629 and 50 hours for a 10-year permit, if a permit of such duration were to be deemed appropriate. Additionally, 15 comments received on the proposed rule, including from permit holders experienced with the application process, referenced the significant burden of applying for section 104 permits and LOCs. This is further reinforced by feedback received by NMFS during the course of permit processing as well as through the PRA process.

The applications submitted by recurrent researchers every 5 years also creates a burden for the agency. Processing a section 104 permit takes approximately 6 months. NMFS processed an average of 40 section 104 permits and LOCs annually over the last 5 years. As NMFS has found with the issuance of longer duration ESA section 10(a)(1)(A) permits, processing fewer permits annually allows additional focus on conservation and recovery, including compiling and summarizing information from permit annual reports for use by ESA section 7 biologists, ESA recovery coordinators, and managers.

*Comment 7:* AWI commented that the 5-year duration limit was established with a precautionary principle in mind, and with a primary goal of protecting marine mammal populations, which can decline precipitously without scientific detection.

*Response 7:* The 1993 proposed rule stated that periodic review is needed and that there should not be indefinite permits for captive marine mammals. As AWI stated later in their letter, the goal of the MMPA is to protect marine mammals such that they can be maintained at optimum sustainable population (OSP). To determine if a population is at OSP and detect potentially precipitous declines, NMFS must periodically assess the status of the population, which is typically achieved through long-term population monitoring under research permits or LOCs. Permits with durations of longer than 5 years may facilitate this long-term population monitoring research and inform management decisions to achieve healthy marine mammal populations.

The issuance of permits for longer than 5 years does not negate the ability to take a precautionary approach to permitting scientific research. Because NMFS has been issuing section 104 permits and LOCs for decades, the effects of specific permitted activities on marine mammals, including particular research techniques, are well known

and documented in the record. The effects of permitted marine mammal research are continually monitored by NMFS through management mechanisms built into the permit process, such as submission of annual reports and incident reports, which are available to the public through the Freedom of Information Act (FOIA). If, for example, there were sudden declines in marine mammal populations, NMFS retains the ability to modify permits to add conditions or otherwise amend a permit, as well as suspend or revoke permits. These actions can be taken at any time during a permit's duration.

*Comment 8:* AWI commented that a 5-year permit duration allows timely oversight of permit applicants who may be acting in bad faith, who violate permit conditions, or who provide misinformation on permit applications. AWI believes that all permit holders should be monitored closely and be required to reapply for permits on a reasonable schedule, where permit holders must clarify discrepancies between permit conditions and actual outcomes. AWI also commented that annual reports, which are not published in the **Federal Register** and require public initiative to review, are insufficient to ensure adequate transparency. If NMFS proceeds with the proposed rule, AWI commented that it will likely become more difficult for NMFS to meaningfully assess whether applicants are applying in good faith and ensure that the criteria continue to be satisfied throughout the duration of the permit.

*Response 8:* NMFS will make its determination on permit issuance based on whether an application includes all of the required information and meets NMFS' issuance criteria for conducting activities over the proposed duration of the permit. If a permit applicant requests a permit duration longer than 5 years, NMFS will determine if the applicant has demonstrated they meet all of the issuance requirements for that proposed duration. Once a permit is issued, permit noncompliance constitutes a violation and is grounds for permit modification, suspension, or revocation, and for enforcement action. All instances of permit noncompliance are required to be reported to our office, which allows NMFS' to continually track permit compliance. NMFS reviews annual and incident reports to ensure compliance with the permit as issued. Additionally, reports from cooperating Federal partners may be used to evaluate permit compliance. For example, in the case of permitted captive research and enhancement, NMFS requires facilities to be compliant

with the Animal Welfare Act and its regulations. Thus, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service's reports may be evaluated to assess permit compliance.

The frequency of reporting (*e.g.*, annually) and the types of reports required will not change regardless of permit duration. AWI did not provide evidence to support the statement that annual reports are insufficient to ensure transparency; however, as stated above in *Response 5*, since 2017, NMFS has issued approximately 45 permits with durations greater than 5 years for non-mammal ESA-listed species. This demonstrates NMFS' ability to manage issuance of longer-term permits. NMFS' review of incident and annual reports and use of adaptive management, for example through permit amendments, has ensured appropriate mitigation is incorporated into permits as warranted (see *Agency Oversight* section below). These reports also allow NMFS to assess if permit holders are making results available to the scientific community in a timely manner, increasing transparency in research and enhancement activities.

*Comment 9:* AWI is concerned about the agency potentially setting negative regulatory precedent, as NMFS stated in its 1993 proposed rule "an indefinite valid period for a permit authorizing the captive holding of marine mammals is unacceptable for a number of reasons" including the need for public review and comment. The 1993 proposed rule further detailed that periodic review of permits is necessary to ensure permit compliance and address any changing circumstances associated with the captive holding of marine mammals. AWI claimed that it is arbitrary and capricious for the agency to reverse course on its longstanding policy.

*Response 9:* NMFS is not proposing indefinite periods for permits. As NMFS stated in the 2024 proposed rule, "each permit would have an expiration date, tailored to the specific activities proposed by the applicant, which would be subject to public comment. . . . Regardless of the requested duration of research, every application for a permit or authorization would include justification for the requested duration and all permits and authorizations issued would have expiration dates." MMPA section 104 (a)(2)(C) requires that permits specify "the period during which the permit is valid," and 50 CFR 216.33(d) requires that an application provides "the requested period of the permit," which will include a specified expiration date.

NMFS considers the process of evaluating permit compliance to be continuous, beginning with assessing the standing of an applicant when a permit application is submitted and continuing through processing of annual reports and incident reports when submitted. Since the 1993 proposed rule, NMFS has taken a more systematic approach to reporting, ensuring all applicants are required to provide answers to certain key questions. Permit holders can now submit annual reports online, making the process easier for them and also making it easier for NMFS to track timeliness of required reports. NMFS monitors active permits via reports to make sure permit holders are in compliance with permit terms and conditions and that the effects of the permitted activities are consistent with those described in NMFS' analysis conducted for permit issuance. In addition to annual reports, permit holders are required to contact NMFS and submit incident reports within 2 weeks if serious injury or mortality of protected species occurs (if not authorized) or reaches that specified in the permit; or, if authorized take is exceeded in any of the following ways: more animals are taken than allowed in the permit; animals are taken in a manner not authorized by this permit; or protected species other than those authorized by a permit are taken. In such cases, permit holders must stop permitted activities and request permission from NMFS to resume. Both annual reports and incident reports are available to the public through FOIA.

As to AWI's concerns about periodic public review, the public will continue to have an opportunity to comment on section 104 permit applications when a Notice of Receipt is published in the **Federal Register**. The public is notified of permit issuance via the **Federal Register** as well. Once a permit is issued, the reports submitted by permit holders are available to the public through FOIA. In addition to public review and comments when an application is in progress, the following will still constitute a major amendment according to 50 CFR 216.39(a)(1) and will be subject to the public comment process: any changes to (1) number and species of marine mammals; (2) the manner of taking, import, or export if it may result in an increased level of take or risk of adverse impact; (3) the location; and (4) the duration, if extending a permit for more than 12 months.

*Comment 10:* AWI commented that captures from the wild or import for public display are not always conducted immediately after the permit is issued,

in some cases not for years after a permit has been issued. AWI commented that a duration of 5 years is most appropriate, as conditions in the wild and at a captive facility may change in that time period. AWI believes a new permit application and review are the most precautionary way to account for any such changes.

*Response 10:* NMFS has not issued a permit for the direct capture of marine mammals from the wild for public display since 1988. Across 15 import permits for public display since 2010, the average time to import was 2.7 years. Some permit holders cannot conduct their requested activity in any given year for various reasons (*e.g.*, pandemic, logistics, funding). Authorized activities can only be conducted during the term of validity of a permit, which means the necessary analyses are conducted to meet the required issuance criteria for the requested time period. If, during the term of permit validity, circumstances change such that NMFS decides that action is warranted (*e.g.*, if there is a sharp decline in the abundance of a population of wild marine mammals, or if a facility is no longer in compliance with the Animal Welfare Act), NMFS retains the ability to modify permits to add conditions or otherwise amend a permit, as well as suspend or revoke permits. Further, as described above in *Response 9*, the following will still constitute a major amendment according to 50 CFR 216.39(a)(1) and will be subject to the public comment process: any changes to (1) number and species of marine mammals; (2) the manner of taking, import, or export if it may result in an increased level of take or risk of adverse impact; (3) the location; and (4) the duration, if extending a permit for more than 12 months. As NMFS stated in our proposed rule (89 FR 35769, May 2, 2024), "each permit would have an expiration date, tailored to the specific activities proposed by the applicant, which would be subject to public comment." NMFS would consider public comments on the proposed duration prior to issuing any permit, including permits for public display.

*Comment 11:* AWI questioned why NMFS is proposing to change the duration of all section 104 permits and LOCs when 93 percent of NMFS' current permits are scientific research permits. The other types of permits tend to be for singular or discrete activities, and a 5-year-duration limitation is more appropriate.

*Response 11:* Removing the 5-year limitation on permit durations does not mean that all permits will be issued for

more than 5 years. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement. NMFS will take into consideration the requested duration of the permit when determining if the applicant has met the applicable statutory and regulatory issuance criteria and restrictions (see Implementation and Oversight section). NMFS will further consider all comments received on a proposed permit application, including the proposed duration, prior to a decision about permit issuance (except the LOCs, which do not require a public comment period).

*Comment 12:* AWI commented that the proposed rule leaves too much to the discretion of the agency, stating that the duration of a permit should not be left to the discretion of individuals who may not know the history of a permit applicant.

*Response 12:* Over the years, NMFS has created numerous internal resources to make the processing of permits and LOCs as objective as possible, as well as maintained the Federal records, which allow all analysts to access relevant past permit information. All issued permits are required to have a clear expiration date. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement. NMFS will consider all comments received on a proposed permit application including the proposed duration, prior to a decision about permit issuance (except LOCs, which do not require a public comment period). The duration will be proposed by the applicant, reviewed by NMFS, and provided to the public and expert reviewers for their review; it is not at the discretion of individual analysts but rather the product of a series of rigorous reviews and analyses to determine if the applicant has demonstrated they meet the applicable statutory and regulatory issuance criteria and restrictions for the duration proposed. NMFS' *Response 1* above provides additional detail about the criteria that may be considered when evaluating an application's requested duration in addition to the applicant's justification. Additionally, analysts review the annual and incident reports of the most recent prior permit held by an applicant. Collectively, this information provides a history of the applicant for analysts, regardless of their tenure within the agency. The annual

and incident reports are also available to the public through FOIA, which provides additional opportunity for public review of permitted and reported activities.

*Comment 13:* AWI stated that with a 5-year permit duration, the disposition of captive animals can be reassessed in a transparent manner within a time frame relevant to the lifespan of the species. AWI further stated that extending a permit ad infinitum could be used as a "cover" for public display of animals imported for research and/or improper post-research disposition of animals, and that a 5-year permit duration allows the issue to be periodically reviewed by the public and the scientific community.

*Response 13:* As stated in *Response 1* above, if an applicant proposes activities that are considered novel or are likely to be controversial, which captive marine mammal permits can be, a shorter permit duration may be warranted. As stated in *Response 9*, NMFS is not proposing indefinite periods for any permits. As NMFS stated in the proposed rule, "each permit would have an expiration date, tailored to the specific activities proposed by the applicant, which would be subject to public comment . . . . Regardless of the requested duration of the proposed activity, every application for a permit or authorization would include justification for the requested duration and all permits and authorizations issued would have expiration dates." MMPA section 104(a)(2)(C) requires that permits specify "the period during which the permit is valid," and 50 CFR 216.33(d) requires that an application provides "the requested period of the permit," which will include a specified expiration date. Further, as stated in *Response 11*, NMFS will take into consideration the requested duration of the permit when determining if the applicant has met the applicable statutory and regulatory issuance criteria and restrictions (see Implementation and Oversight section). NMFS will further consider all comments received on a proposed permit application, including the proposed duration, prior to a decision about permit issuance.

*Comment 14:* AWI commented that NMFS should periodically examine whether scientific research conducted under a research permit remains bona fide. NMFS shouldn't assume that all longitudinal studies are bona fide. Long-term research projects have the potential to become duplicative or to produce results that are no longer likely to be

accepted for publication in a refereed scientific journal.

*Response 14:* NMFS does not assume longitudinal studies are bona fide. Bona fide scientific research is defined at 50 CFR 216.3 as research on marine mammals by qualified personnel, the results of which are likely to be accepted for publication in a scientific journal, are likely to contribute to basic knowledge of marine mammal biology or ecology, or are likely to identify, evaluate, or resolve conservation problems. Bona fide determinations are supported by a number of factors, including but not limited to: (1) a permit applicant's previously published research and history as a permitted researcher; (2) whether the proposed research is appropriately designed to meet the objectives; (3) whether the results of the proposed research are likely to qualify for publication; and (4) whether the proposed research will contribute to our knowledge of the species, or address conservation problems over a given time period. Evaluation of annual reports informs NMFS if the research conducted under the permit remains bona fide. Annual reports allow NMFS to assess if permit holders are making results available to the scientific community in a timely manner, such as journal publications and presentations. NMFS' application instructions ask researchers to describe how their study is different from, builds upon, or duplicates past research. Duplicative research may be warranted, for example, when validating previous study results. Applicants are required to describe how they coordinate with other researchers to effectively manage research efforts and any potential impacts to the marine mammals in the area.

*Comment 15:* AWI provided a hypothetical scenario in which a zoo bred a non-releasable animal that was precluded from breeding, resulting in a permit violation. AWI commented that requiring the permit holder to reapply for a new permit after 5 years will ensure the permit holder offers a justification—which will be assessed by the agency and outside reviewers, including outside scientists and members of the public—for the violation.

*Response 15:* Permit holders are required to report all instances of permit noncompliance, as part of NMFS' continual evaluation of permit compliance. Permit holders are required to contact NMFS and submit incident reports within 2 weeks if serious injury or mortality of protected species occurs (if not authorized) or reaches that specified in the permit; or, if authorized

take is exceeded in any of the following ways: more animals are taken than allowed in the permit; animals are taken in a manner not authorized by this permit; or protected species other than those authorized by a permit are taken. In such cases, permit holders must stop permitted activities, describe the incident and any future mitigation measures to prevent the incident from happening again, and request permission from NMFS to resume. NMFS can take action including modifying, suspending, or revoking the permit. In addition, the annual report requires permit holders to discuss any incidents, problems, or unexpected effects of their activities.

*Comment 16:* AWI commented that most photography permits are issued for singular or discrete actions so no need seems to exist for altering the current regulations to allow permits greater than 5 years in duration. AWI commented that if a permit holder for photography is unable to complete a permitted action before the 5-year permit duration expires, it is appropriate for the permit holder to reapply for a permit, as circumstances outlined in the original permit application may have changed.

*Response 16:* Most photography permits are for periods of less than 5 years, but there are instances where a project of greater than 5 years could be requested and justified. Whether a permit is ultimately issued for longer than 5 years will depend on the permit application, including the requested duration, and whether the applicant is able to meet the required issuance criteria for the proposed action. Removing the 5-year restriction does not prohibit NMFS from issuing permits for less than 5 years.

*Comment 17:* AWI commented that if the process for applying for an LOC is already streamlined, it does not seem justifiable to remove the 5-year duration limitation as well.

*Response 17:* The statute does not prohibit NMFS from implementing additional streamlining measures, provided the relevant issuance criteria are met. See also *Response 16* above.

*Comment 18:* AWI commented that they see no reason for consistency between the MMPA and ESA with regard to permit duration as they are different statutes with different standards and different goals. They commented that the MMPA seeks to maintain species at an ecologically relevant level, while the ESA seeks to recover species that have already declined to a dangerously low level. AWI commented that the existing regulations as described in NMFS's final rule on 50 CFR parts 216 (MMPA) and

222 (ESA) (61 FR 21926, May 10, 1996) are already consistent for marine mammals. Given the different purposes of the MMPA and the ESA, AWI does not believe further consistency is needed.

*Response 18:* NMFS issues permits jointly under both statutes in the cases of marine mammals that are listed as endangered or threatened. Both statutes provide for the issuance of permits for the purposes of scientific research and enhancement; neither the ESA nor the agency's implementing regulations limit the duration of those permits, even though they focus exclusively on species that are endangered or threatened and thus require heightened protection. Since 2017, NMFS has issued permits for scientific research of non-marine mammal ESA-listed species (e.g., sea turtles, sturgeon) for durations greater than 5 years.

*Comment 19:* AWI commented that both the individual and cumulative effects of climate change—and the difficulty researchers face in monitoring marine mammals, which Congress explicitly recognized in the MMPA—mean that takes such as those authorized by section 104 should be reconsidered regularly enough for NMFS to recognize and respond to problematic trends in marine mammal populations.

*Response 19:* NMFS acknowledges that climate change may have unanticipated effects on marine mammals and that long-term research is required to assess the effects to marine mammal populations (Gulland *et al.*, 2022; Orgeret *et al.*, 2021; Sanderson & Alexander, 2020). The ability to issue permits for longer than 5 years does not negate NMFS' ability to monitor the effects of the permitted activity and take action as warranted. As stated in *Response 7*, the effects of permitted marine mammal research are continually monitored by NMFS through management mechanisms built into the permit process, such as submission of annual reports and incident reports, which are available to the public through FOIA.

If, for example, there are climate-driven changes to marine mammal populations that cause concern, NMFS retains the ability to modify permits to add conditions or otherwise amend a permit, as well as suspend or revoke permits. These actions can be taken at any time during a permit's duration.

*Comment 20:* AWI commented that if the agency does away with mandatory time limits for section 104 permits, those seeking to exploit marine mammals in other ways may push for adjustments to duration requirements

for other types of permits. AWI also commented that even for purposes of national defense, a 7-year consecutive time limit cannot be exceeded when it comes to the permitted take of marine mammals, as outlined in MMPA section 101(a)(5).

*Response 20:* As noted above, NMFS is not “doing away” with time limits on permits. Every permit will have an expiration date. Furthermore, section 104 is a distinct section of the MMPA with its own requirements, which do not include a specific maximum duration. As noted above, section 104(a)(2)(C) requires only that permits specify “the period during which the permit is valid;” the statute does not specify a limit to permit duration for permits and LOCs issued under section 104.

Incidental take authorizations under MMPA section 101(a)(5) (16 U.S.C. 1371(a)(5)), as cited by AWI, are distinct from section 104 permits, and contain a duration limit explicitly imposed by the statute. In fact, the plain language of the MMPA demonstrates that where Congress intended there to be a defined period, it explicitly provided one (e.g., MMPA sections 101(a)(5)(A) and (D)). These types of authorizations are not a part of this rulemaking. The 5-year limitation on section 104 permits, by contrast, was established by NMFS 30 years ago via a rulemaking process. For the reasons provided in this final rule, the blanket 5-year limit is no longer an effective or efficient method of managing section 104 permits and LOCs.

### Implementation and Oversight

Once this rule becomes effective, NMFS will begin accepting new applications for permits and LOCs that may propose durations of longer than 5 years. Requiring new permit applications, rather than amendment requests, will allow the public to review the entirety of the proposed activity. This will also allow the agency to manage its workload and continue processing new permit applications as anticipated based on current permit expirations.

### Information Required in Applications

Applications for section 104 permits and LOCs will be evaluated and processed in the same manner as they are now in accordance with 50 CFR part 216. Applicants will still have to follow the Office of Management and Budget (OMB)-approved permit and LOC application instructions and include their proposed start and end dates, as well as a description of the frequency and seasonality of their proposed



activities in their application. Currently, applicants for section 104 permits and LOCs can request a time period of 5 years or less. Under the changed regulations, applicants may request a permit duration longer than 5 years, which may be more appropriately aligned with a project's goals rather than an arbitrary 5-year duration. Regardless of the requested duration, every application for a permit or LOC will be required to include justification for the requested duration. NMFS will update the permit and LOC application instructions to include this requirement.

#### *Opportunity for Public Comment*

This regulatory change will not remove the public's opportunity to comment on permit applications and any major permit amendments. NMFS will continue to publish notices in the **Federal Register** for a 30-day public comment period when complete permit applications and requests for major amendments are received consistent with statutory and regulatory requirements (16 U.S.C. 1374(d) and 50 CFR 216.33(d), respectively). These notices provide the public an opportunity to comment on the proposed permit duration for each application. NMFS will also continue to solicit comments from the MMC consistent with § 216.33(d)(2), and other relevant Federal and State agencies in accordance with § 216.33(d)(3), typically concurrent with the public comment period. NMFS will continue to consider all public and expert comments on a proposed permit application, including the proposed duration, prior to permit issuance. LOCs do not currently require a public comment period and that will not change.

When this final rule becomes effective, NMFS will begin implementing the duration changes upon the receipt of new permit and LOC applications. Applicants must provide a justification for the proposed duration when they apply for a new permit or LOC. This process will ensure that the public is able to review and comment on permit applications with durations longer than 5 years. Currently active permits with durations of 5 years or less will not automatically be changed to longer durations; we will not be amending those permits to extend their duration other than issuance of minor amendments for extensions of 12 months or less if justified (*e.g.*, to allow activities to continue uninterrupted prior to obtaining a new permit). As stated above, we will consider permit durations of more than 5 years in new permit applications. See *Amendments*

*to Extend the Permit or LOC Duration* below for additional information.

#### *Permit Issuance*

Issuing a longer term permit will require that the duration as proposed in a permit or LOC application is justified and appropriate for the applicant's project and objectives, is supported by the applicant's history with previous MMPA permits, has undergone public comment (except for LOCs, which do not require public comment), and meets all statutory and regulatory issuance criteria. All permits and LOCs issued will have expiration dates printed on the permit documentation. Despite removing the 5-year regulatory maximum duration, NMFS expects that there will continue to be projects for which a permit for a term of 5 years or less will be appropriate. For example, permits such as those for commercial or educational photography are issued for discrete projects that take place at specific times, rarely requiring more than a year or two. Similarly, permits for importation of marine mammals for public display are issued for a singular or discrete action, which typically warrant a permit of short duration. Thus, the duration of the permit will be determined based on the specific project proposed and the justified duration of that project.

To obtain a section 104 permit for scientific research or enhancement, applicants must meet certain statutory and regulatory issuance criteria. This includes, among other things, the regulatory issuance criteria at § 216.34, which require applicants to demonstrate, for the time period proposed, that the activity is:

- Humane and with no unnecessary risks;
- Consistent with regulatory restrictions;
- Consistent with the purposes and policies of the ESA (if threatened or endangered species are involved);
- Not likely to have a significant adverse impact on the species or stock;
- Conducted by personnel with expertise and adequate facilities and resources;
- Conducted by personnel with adequate resources for marine mammals held captive or transported; and
- That any requested import or export will not likely result in additional taking.

Additional criteria apply for depleted, threatened, and endangered marine mammals. These criteria will still apply regardless of permit duration.

In addition to the regulatory criteria above, NMFS will also consider whether the applicant has previously held a

permit or LOC, and if so, whether they have successfully carried out the permitted objectives. For example, for research permits, this may include whether the permit holder obtained funding, collected data, and made the results available to the scientific community in a reasonable period. As explained above (see *Need for the Action*), most permits issued under section 104 have not raised substantial public concern, and the impacts of most activities conducted under section 104 permits are well known. If an applicant proposes activities that are considered novel or are likely to be controversial, a shorter permit duration may be warranted.

#### *Agency Oversight*

Under the regulation change, permit and LOC holders will still be subject to agency oversight. For example, permit and LOC holders must submit annual reports as required by the regulations at §§ 216.38 and 216.45(d)(2), respectively. This requirement is universal, regardless of how long their permit or LOC is valid. Further, permit holders are required to stop permitted activities and submit incident reports for incidents such as mortalities, exceeding authorized take, and taking protected species that were not authorized. LOC and photography permit holders must temporarily stop authorized research if they exceed Level B harassment. Annual and incident reports allow NMFS to monitor permit and LOC compliance and impacts to protected species and are available to the public. NMFS maintains its authority for permit or LOC modification, suspension, or revocation. For example, NMFS may determine a permit modification is warranted to add permit conditions in response to information provided in annual or incident reports.

The agency will continue to publish in the **Federal Register** notices of receipt of requests for major amendments to increase the number of animals, add species, add methods that will increase adverse impacts, and change locations, for a 30-day public comment period, and notices of issuance of all major amendments and minor amendments extending a permit or LOC up to 1 year.

For any amendment to a permit or LOC, the agency will also reexamine the National Environmental Policy Act analysis based on information provided in the amendment request, taking into consideration information in annual and incident reports and in published literature. Likewise, if ESA-listed species are involved and the action is covered under an ESA section 7

consultation and, for example, a new species is listed or critical habitat is designated, NMFS will review the new information to determine if consultation needs to be reinitiated in accordance with 50 CFR 402.16. If these analyses produce new information that warrants a change to a permit or permits, NMFS retains the ability to amend permits to add conditions, such as mitigation measures to minimize impacts to protected species, as described in § 216.36(b).

*Amendments To Extend the Permit or LOC Duration*

As mentioned above (see *Opportunity for Public Comment*) and consistent with current practice, permit and LOC holders may request a minor amendment to extend the duration of their permit up to 1 year, if justified. The regulations at 50 CFR 216.39 state that a major amendment may include an extension of a permit beyond 12 months; however, NMFS typically issues extensions for 12 months or less.

**Classification**

Pursuant to the procedures established to implement E.O. 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. Permit and LOC applicants including individuals, academic institutions, business or other for-profit organizations, not-for-profit institutions, and government organizations are the only entities that are subject to the requirements in these regulations. The number of small governmental jurisdictions, small organizations, or small businesses affected is approximately less than 150 entities total, and less than 35 applicants annually (some of which submit multiple applications). The change in duration of permits will not affect the cost to these small entities, as it will require the same amount of time and resources to apply for a 5-year permit as it will to apply for a permit of a longer duration. Overall, this rule may reduce the costs to these entities by potentially spending less time applying for permits. For example, the estimated number of burden hours to complete a scientific research permit application is 50 hours, with an estimated average hourly rate of \$32.58. Thus, an

applicant for a scientific research permit will spend approximately \$3,258 and 100 hours to apply for two consecutive 5-year research permits. By removing the duration limit for section 104 permits, the number of burden hours and costs to apply for a scientific research permit could potentially be reduced to approximately \$1,629 and 50 hours for a 10-year permit, if issued. An applicant for an LOC will spend approximately 10 hours and \$325.80 to complete a 5-year LOC application, which if issued for a longer period, will reduce that cost. Because of this, a regulatory flexibility analysis is not required, and none has been prepared.

A person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with an information collection subject to the requirements of the Paperwork Reduction Act (PRA) of 1995 unless the information collection has a currently valid OMB Control Number. This rule contains collection-of-information requirements subject to the provisions of the PRA.<sup>1</sup> No changes to the reporting requirements or to the information collection instrument is required as a result of this regulatory change, other than removing the 5-year duration restriction and requesting justification for an applicant's proposed permit duration.

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

Administrative practice and procedure, Exports, Imports, Marine mammals.

Dated: December 4, 2024.

**Samuel D. Rauch, III,**  
*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, NMFS amends 50 CFR part 216 as follows:

**PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS**

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

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

■ 2. In § 216.35, revise paragraph (b) to read as follows:

<sup>1</sup> The information collection is currently approved by OMB under control no. 0648-0084, *Basic Requirements for Special Exception Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under section 104 of the MMPA, the Fur Seal Act, and/or section 10(a)(1)(A) of the Endangered Species Act.*

**§ 216.35 Permit restrictions.**

\* \* \* \* \*  
(b) Special exception permits expire on the date specified in the permit, unless limited or extended in duration by the Director in accordance with §§ 216.36 and 216.39.  
\* \* \* \* \*

■ 3. In § 216.45, revise paragraphs (b)(2)(iv) and (d)(3) to read as follows:

**§ 216.45 General Authorization for Level B harassment for scientific research.**

\* \* \* \* \*  
(b) \* \* \*  
(2) \* \* \*  
(iv) The period of time over which the research project or program will be conducted (*i.e.*, the requested period of the LOC), including the field season(s) for the research, if applicable;  
\* \* \* \* \*  
(d) \* \* \*

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of confirmation issued under paragraph (c) of this section, unless limited or extended by the Director, or modified, suspended, or revoked in accordance with paragraph (e) of this section;

\* \* \* \* \*  
[FR Doc. 2024-28931 Filed 12-11-24; 8:45 am]  
BILLING CODE 3510-22-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

[Docket No. 231221-0314; RTID 0648-XE527]

**Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; Quota Transfer From New Jersey to North Carolina**

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

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS announces that the State of New Jersey is transferring a portion of their 2024 commercial bluefish quota to the State of North Carolina. This quota adjustment is necessary to comply with the Atlantic Bluefish Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2024 commercial bluefish quotas for New Jersey and North Carolina.