



# MARINE MAMMAL COMMISSION

12 September 2011

Mr. P. Michael Payne, Chief  
Permits, Conservation, and Education Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910-3225

Re: Permit Application No. 15575  
(Robert DiGiovanni, Riverhead Foundation  
for Marine Research and Preservation)

Dear Mr. Payne:

The Marine Mammal 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. Mr. DiGiovanni is requesting authorization to conduct surveys for marine mammals off the east coast of the United States during a five-year period.

## RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit as requested but condition the permit to require Mr. DiGiovanni to minimize disturbance of the subject animals by exercising caution when approaching animals, particularly mother/calf pairs, and stopping an approach if there is evidence that the activity may be interfering with mother/calf behavior, feeding, or other vital functions.

## RATIONALE

Mr. DiGiovanni proposes to conduct aerial, vessel-based, and land-based surveys for marine mammals in coastal and offshore waters from Virginia to Rhode Island. The purpose of the proposed research is to obtain baseline data on the presence, abundance, distribution, migratory patterns, and behaviors of marine mammals in mid-Atlantic waters. This type of data would enhance the work conducted by the Northeast Fisheries Science Center, primarily for its sighting advisory system and the Atlantic Marine Assessment Program.

Each year Mr. DiGiovanni would conduct bi-monthly systematic aerial line transect surveys. He would survey known pinniped haul-out sites and nearshore and continental shelf waters from 113 to 177 km from shore. Mr. DiGiovanni would use fixed-wing aircraft flown at a minimum altitude of 183 m above sea level. He would collect standard survey data (e.g., species, number, distance/heading, behavior), including environmental conditions. Mr. DiGiovanni would circle the animals no more than six times to obtain good quality photographs or group size and species composition data. He also would conduct opportunistic vessel-based line transect surveys when transiting to various seal haul-out sites. The surveys would be conducted from a vessel

approximately 8 m in length and would involve the collection of similar types of data. If he observes any large whales, primarily North Atlantic right whales, he would leave the trackline and approach the whale(s) at a close distance to obtain photographs. Animals would be approached on a parallel course at a maximum speed of 19 km/hour to keep up with a transiting animal and at a distance of no less than 18 m. Approaches would be limited to 30 minutes per individual or group of animals. He also would observe seals at their haul-out sites from the same vessel, remaining at least 18 m from the site.

In addition, Mr. DiGiovanni would survey haul-out sites from land either on foot opportunistically or via remote video cameras. The video cameras would be installed 9 m from the haul-out sites during the off-season, when seals do not occur at the sites. Mr. DiGiovanni would maintain the video cameras on a monthly basis. Lastly, he would collect feces from the haul-out sites opportunistically to determine prey composition, biotoxin and disease prevalence, and stable isotope signatures. Mr. DiGiovanni would collect feces as the seals vacate the haul-out site because of the rising tide or disturbance from the presence of kayaks or other watercraft.

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit as requested. However, the Commission also has a few concerns. Each year Mr. DiGiovanni would harass numerous individuals of 39 cetacean and 4 pinniped species of any age class or sex (see the take table in the application) during survey activities. Mr. DiGiovanni indicated that he would terminate survey efforts immediately if the activities interfere with pair-bonding or nursing and if any animal rapidly changes direction or swim speed or exhibits erratic swimming behavior or rapid diving. The applicant also has indicated that he would not position his vessel between a mother and her calf. In addition, Mr. DiGiovanni would use telephoto lenses to maximize the distance between the observing platform and the animal. The Marine Mammal Commission believes those measures are prudent but still recommends that the National Marine Fisheries Service condition the permit to require the applicant to minimize disturbance of the subject animals by exercising caution when approaching animals, particularly mother/calf pairs, and stopping an approach if there is evidence that the activity may be interfering with mother/calf behavior, feeding, or other vital functions.

Mr. DiGiovanni's proposed studies may overlap with surveys and related activities conducted by other researchers, including those of the Service, working on the same species in the same areas. However, some of the areas that the Service should be surveying are not surveyed regularly, primarily the New York Bight and Long Island Sound. The Service has confirmed the need for additional effort and has offered technical, software, and analytical support for Mr. DiGiovanni's project. In addition, he would coordinate the location of the surveys with the Service to avoid overlap with its surveys, unless requested by the Service. Mr. DiGiovanni also would share his data with the Service.

The Commission understands that the Service will require Mr. DiGiovanni to monitor, record, and report the amount of disturbance associated with his proposed activities. Such monitoring and reporting provides the Service with a basis for determining if the amount of disturbance is excessive and, as a result, it should impose additional precautionary measures.

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The Commission believes that the activities for which it has recommended approval are consistent with the purposes and policies of the Marine Mammal Protection Act. Please contact me if you have any questions concerning the Commission's recommendation.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director