



# MARINE MAMMAL COMMISSION

18 June 2012

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

Re: Permit Application No. 17157  
(Stephen Trumble, Ph.D.,  
Baylor University)

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. Dr. Trumble is requesting authorization to obtain and conduct analyses on mysticete earplugs during a five-year period.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit to authorize the research, but only if the permit—

- (1) requires Dr. Trumble to provide documentation sufficient to demonstrate that each sample to be imported was taken in accordance with the laws of the country of origin and was not taken in violation of the Marine Mammal Protection Act or other applicable U.S. laws,
- (2) specifies that samples taken in any country's whaling operations that prompted the Secretary of Commerce to certify the country under the Pelly Amendment may not be imported, and
- (3) specifically limits importation of minke whale samples from Japan to those from whales taken before the 1986 moratorium on commercial whaling.

## RATIONALE

Dr. Trumble is requesting authorization to obtain and conduct analyses on earplugs from various species of mysticetes. The purpose of the research is to (1) investigate the chronological accumulation of contaminant and hormone concentrations in individual whales and (2) determine individual- and population-level exposure to those contaminants and resulting hormone concentrations.

To meet his objectives, Dr. Trumble proposes to conduct analyses on up to 25 earplugs each from blue, sei, minke, humpback, and gray whales. He would analyze the earplugs for chlorinated pesticides, brominated flame-retardants, polychlorinated biphenyls, cortisol, aldosterone, progesterone, and testosterone. According to the application, some of the samples he proposes to analyze are housed at various museums including the Smithsonian Institution, the Natural History

Museum of London, and the Natural History Museum of Los Angeles County. Subsequently, the Service has informed the Commission by e-mail that Dr. Trumble also is interested in obtaining gray whale samples from Russia and minke whale samples from Japan.

The possible importation of gray whale samples from Russia does not raise concerns if the samples come from whales that were part of the eastern North Pacific gray whale population and were taken in that country's aboriginal subsistence whaling program. Such whaling is not contrary to U.S. law, is conducted in accordance with Russian law, and—in effect—is sanctioned by the International Whaling Commission. In contrast, the Commission would be concerned if the importation of minke whale samples from Japan involved minke whales taken by scientific whaling operations.

The Marine Mammal Protection Act recognizes the value of scientific research. It allows permits to be issued for the taking and importation of marine mammals to further a bona fide scientific purpose. The Act's provisions for imports are relatively liberal, allowing pregnant, nursing, or young marine mammals; animals from depleted populations; and even animals taken in an inhumane manner to be imported. It also contains expedited permitting procedures if unique research opportunities otherwise would be lost. However, the Marine Mammal Commission does not believe that the importance placed on scientific research under the Act should be absolute. In carrying out its duties under the Act, the Commission has long followed the policy that taking for purposes of scientific research should be by the least invasive means feasible. That would not be the case here, at least when whales taken in Japan's scientific whaling are concerned.

In this case, the value of the research should be balanced against the importation of whale parts from countries whose whaling activities have prompted certification under the Pelly Amendment to the Fishermen's Protective Act (22 U.S.C. § 1978). The International Whaling Commission imposed a moratorium on commercial whaling in 1986. Under the Pelly Amendment, the Secretary of Commerce has certified three times to the President that Japan's scientific whaling program is diminishing the effectiveness of the International Whaling Commission's conservation program. The first two certifications (in 1988 and 1995) were in response to Japan's research whaling involving the taking of minke whales. Those certifications remain in place.

None of those certifications resulted in the imposition of trade sanctions involving products from Japan. Barring the imposition of such sanctions, applicable law does not explicitly prohibit the importation into the United States of whale parts collected for scientific research from certified countries. Such an import does not appear to run afoul of the import prohibition set forth in section 102(c)(1) of the Marine Mammal Protection Act—technically, the parts would not have been taken in violation of that Act and they were not taken in violation of Japanese law.

But the importation and use of minke whale samples taken from whales killed as part of Japanese scientific whaling would run counter to the purposes of the Pelly Amendment. The United States certified Japan under that provision because it believed (and continues to believe) that the scientific whaling carried out by Japan is diminishing the effectiveness of the International Whaling Commission's conservation program. To allow the importation and use of such samples would lend tacit support to that scientific whaling program.

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Dr. Trumble has an alternative in this case. Japan may be able to provide samples from minke whales taken before the commercial moratorium went into effect and the Pelly Amendment certifications were issued. The Commission believes those samples could be imported without undermining the U.S. position on scientific whaling. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit to authorize this research, but only if the permit (1) requires Dr. Trumble to provide documentation sufficient to demonstrate that each sample to be imported was taken in accordance with the laws of the country of origin and was not taken in violation of the Marine Mammal Protection Act or other applicable U.S. laws, (2) specifies that samples taken in any country's whaling operations that prompted the Secretary of Commerce to certify the country under the Pelly Amendment may not be imported, and (3) specifically limits importation of minke whale samples from Japan to those from whales taken before the 1986 moratorium on commercial whaling.

In making this recommendation, the Commission does not intend to focus exclusively on the potential importation of specimens from Japan. Other countries also have been certified under the Pelly Amendment for diminishing the effectiveness of the International Whaling Commission's conservation program, most notably Norway and Iceland. The prospect of authorizing the importation of specimens taken in these countries' whaling operations raises similar concerns that merit heightened scrutiny. Because it is possible that parts taken in these countries have been archived in museum collections elsewhere, the Service should insist on documentation of the source and method of collection of each specimen to be imported sufficient to demonstrate that it is from an approved source (i.e., unless specifically authorized, it was not obtained from whaling operations by a certified country).

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 recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive, flowing style.

Timothy J. Ragen, Ph.D.  
Executive Director