

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

31 December 2003

Ms. Laurie K. Allen
Director, Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Allen:

During recent Congressional hearings on reauthorization of the Marine Mammal Protection Act (MMPA), researchers complained that the process for obtaining scientific research permits remains overly burdensome and subject to lengthy delays. In response, the Marine Mammal Commission considered issues related to permits at its annual meeting held in Newport, Rhode Island on 21–23 October 2003. We appreciate the candid presentations on permit issues by your staff and the discussions with researchers that followed. It was readily apparent from those discussions that at least part of the problem is attributable to insufficient staffing to do all that needs to be done, both within the Office of Protected Resources and at the Fish and Wildlife Service's permit branch.

Based on the presentations made by the National Marine Fisheries Service and researchers at our meeting, delays, in many cases stem not from the requirements of the Marine Mammal Protection Act, but from additional reviews and procedures necessitated by the National Environmental Policy Act (NEPA), which may require preparation of environmental impact statements or assessments, and/or the Endangered Species Act (ESA), which triggers section 7 consultations. Although these additional analyses provide essential substantive review of the potential environmental effects of proposed research and the anticipated effects on species and habitat listed or designated under the Endangered Species Act, they can be time-consuming. Thus, to the extent possible, the Service needs to look for ways to streamline and coordinate these reviews without undermining their substantive purpose. Even though the requirements vary somewhat under the different statutes, many of the analyses are similar. As such, the Service should be able to consolidate them into a single process.

As reflected by the rulings in the limited number of lawsuits seeking to invalidate research permits, the Service remains vulnerable to challenges based on NEPA compliance. This is a deficiency that the permit office has recognized and is seeking to correct, but apparently at a significant cost to the agency's ability to process some permits in a timely manner. We hope that this is a temporary problem as the Service seeks to prepare a few core NEPA documents addressing research on certain species, such as the North Atlantic right whale, or involving certain techniques, such as biopsy sampling, that will enable it to use tiering to comply with NEPA as it reviews individual permit applications. In the interim, we suggest that the Service seek alternative means of documenting NEPA compliance, such as preparing environmental assessments or providing a fuller

PHONE: (301) 504-0087
FAX: (301) 504-0099

Ms. Laurie K. Allen
31 December 2003
Page 2

explanation in its decision documents as to why none of exceptions to the categorical exclusion for permits applies in a particular instance.

The Commission believes that there is a pressing need for the Services to focus on developing ways to better coordinated analyses of applications under the MMPA, ESA, and NEPA. In particular, the Commission recommends that the National Marine Fisheries Service:

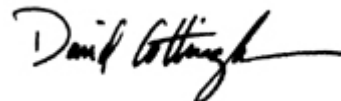
- explore within the different divisions of your office and with your legal counsel options for better coordinating and consolidating application processing under the multiple statutes;
- evaluate and, as necessary, restructure the current system for conducting permit-related consultations under the ESA;
- develop measures to hasten the preparation of programmatic assessments under NEPA, either in-house or through contractors;
- revise application instructions for scientific research permits and enhancement permits under the MMPA and the ESA (see separate letter on this point); and
- consider ways to free-up staff to work on scientific research issues, e.g. by transferring inventory responsibilities to the International Species Identification System (ISIS).

The Commission recognizes that accomplishing some of these tasks will be very difficult absent additional funding and personnel for the Office of Protected Resources and its permits division. The Commission supports the Service's efforts to secure additional resources for these purposes.

We also believe that increased dialogue between the Fish and Wildlife Service and the National Marine Fisheries Service concerning implementation of their permitting programs is needed, and that the agencies consider developing joint permit regulations and policies. One pressing need in this regard is how the agencies are going to implement the recent changes to the Marine Mammal Protection Act's definition of "harassment" implemented by the National Defense Authorization Act of 2004, which is applicable not only to military readiness activities but to permitted scientific research activities conducted by, or on behalf of the Federal Government.

The Commission looks forward to working with you on these issues to improve the efficiency and effectiveness of the permit review process.

Sincerely,



David Cottingham
Executive Director

cc: Mr. Charlie R. Chandler
Mr. Stephen L. Leathery
Peter O. Thomas, Ph.D.