

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

16 January 2009

Docket No. APHIS-2006-0159
Attn: Jodie Kulpa-Eddy, D.V.M.
Regulatory Analysis and Development
PPD, APHIS Station 3A-03.8
Animal and Plant Health Inspection Service
Riverdale MD 20737-1238

Dear Dr. Kulpa-Eddy:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the Animal and Plant Health Inspection Service's 23 October 2008 *Federal Register* notice (73 Fed. Reg. 63085) proposing to amend its regulations implementing the Animal Welfare Act. The Service is proposing to add a new section 2.134 to require contingency planning and related training of personnel at research facilities and by dealers, exhibitors, intermediate handlers, and carriers. These proposed requirements would be in addition to those at section 3.101(b), which set forth water and power supply requirements for facilities housing marine mammals. Section 3.101(b) also requires that facilities maintaining marine mammals develop evacuation plans to respond to disasters and to describe backup systems and/or arrangements for relocating animals.

Proposed section 2.134 would require that all licensees and registrants (1) identify situations their facilities might experience that would trigger the need for a contingency plan (e.g., electrical outages, faulty HVAC systems, fires, animal escapes, and natural disasters), (2) outline specific tasks to be carried out in response to the identified emergencies or disasters, (3) identify a chain of command (by name or position title) for carrying out such tasks, and (4) address how response and recovery will be handled by specifying the planned materials, resources, and training of personnel.

RECOMMENDATIONS

The Marine Mammal Commission concurs with the Service that the proposed additional requirements are appropriate and necessary. The Marine Mammal Commission therefore recommends that the Animal and Plant Health Inspection Service adopt the proposed amendment to its regulations, subject to certain modifications. The Marine Mammal Commission recommends that the Animal and Plant Health Inspection Service revise the rule to—

- require that contingency plans to be developed under section 2.134 for facilities maintaining marine mammals in open-ocean pens specify the arrangements that have been made to identify and recapture animals if they escape or are lost during a natural disaster or other emergency situation;
- coordinate contingency planning procedures by adding a conforming revision to existing section 3.101(b) to require that the plans submitted under that provision include all information required under new section 2.134; and
- require that research facilities that are subject to the Institutional Animal Care and Use Committee requirements have those committees review their contingency plans.

RATIONALE

Experience has demonstrated that open-water facilities that maintain marine mammals are at particular risk of losing or having to release animals in the event of a natural disaster or similar emergency. Under certain conditions, these animals pose a risk to wild marine mammals or marine ecosystems. For example, they may transmit diseases contracted in captivity to wild stocks. To avoid such risks, the Commission believes that special steps need to be taken to respond to the escape or release of animals at such facilities. The Marine Mammal Commission therefore recommends that the Animal and Plant Health Inspection Service require that contingency plans to be developed under section 2.134 for facilities that maintain marine mammals in open-ocean pens specify the arrangements that have been made to identify and recapture animals if they escape or are lost during a natural disaster or other emergency situation.

Section 3.101(b) of the Service's existing regulations requires that facilities that maintain marine mammals develop and submit contingency plans regarding emergency sources of water and power. As noted in the preamble to the proposed rule, these requirements would remain in force and be supplemented by the new requirements of section 2.134. Thus, for marine mammal facilities, there would be two somewhat overlapping sets of contingency planning requirements, some of which would require submission of information to the Service and some of which would not. The Commission believes that separating the planning process in this way will lead to confusion and undermine effectiveness. This being the case, the Marine Mammal Commission recommends that the Service coordinate contingency planning procedures by adding a conforming revision to existing section 3.101(b) to require that the plans submitted under that provision include all information required under new section 2.134.

The contingency planning requirements would apply to a broad range of facilities and individuals and businesses that handle and transport animals. Some of these entities (i.e., research facilities) are required to establish Institutional Animal Care and Use Committees to review and assess their animal programs, facilities, and procedures. The Commission believes that it would be appropriate for those facilities that are subject to the Institutional Animal Care and Use Committee regulatory requirements to have those committees review their contingency plans. The Marine Mammal Commission recommends that the proposed rule be revised to require such reviews.

Please contact me if you have questions about any of these comments or recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Cc: Mr. P. Michael Payne
Mr. Timothy Van Norman