



MARINE MAMMAL COMMISSION

21 December 2010

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. 15488
(Georgia Department of Natural Resources,
Wildlife Resources Division)

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. The applicant is requesting authorization to conduct research on North Atlantic right whales and to take by incidental harassment bottlenose and Atlantic spotted dolphins off Florida, Georgia, and South Carolina during a five-year period.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service refrain from issuing the requested permit until it either completes a programmatic environmental impact statement or provides a reasoned explanation as to why it no longer believes that preparation of an environmental impact statement is necessary to comply with the National Environmental Policy Act. If the Service decides to issue the requested permit notwithstanding resolution of this issue, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

- ensure that the proposed research has been reviewed and approved by an Institutional Animal Care and Use Committee in accordance with section 2.31 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations, and
- require the applicant to obtain all necessary permits under the Convention on International Trade in Endangered Species of Wild Fauna and Flora before importing or exporting any marine mammal parts.

RATIONALE

The applicant proposes to take by harassment up to 350 North Atlantic right whales per year from November through April while conducting vessel-based surveys to obtain passive acoustic recordings, make behavioral observations, and approach whales for photo-identification. In addition, the applicant is requesting authorization to approach annually up to 50 adult or juvenile right whales and 20 calves older than one month to collect skin/blubber biopsy samples. If the applicant is

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unable to collect 20 calf biopsy samples in a given year, then the remaining biopsy takes would be used to collect biopsy samples from older animals. The applicant proposes to identify sampled animals on a near real-time basis and, within 12 hours of sampling, to report activities and results to the National Marine Fisheries Service's Northeast Fisheries Science Center to help ensure that the right whales sampled are not subject to these same procedures by other permit holders authorized to conduct similar research. The purpose of the proposed research is to assess right whale population status and demography and the impact of human activities on them. The applicant would export skin samples to Trent University and Saint Mary's University, both in Canada, for genetic analyses and would submit skin subsamples to the Service's Northeast Fisheries Science Center and the Florida Fish and Wildlife Conservation Commission for archiving. The applicant also may provide skin and blubber subsamples to the Service's Marine Mammal Health and Stranding Response Program to assess the baseline health of the population and may archive additional subsamples at the Smithsonian Institution Support Center. The proposed research would incidentally harass up to 350 bottlenose dolphins and 200 Atlantic spotted dolphins per year.

Since 2005 the Commission has recommended that the Service defer consideration of permit applications and amendment requests seeking authorization to take North Atlantic and North Pacific right whales until it resolves issues pertaining to compliance with the National Environmental Policy Act. The Service may do so either by (1) completing the programmatic environmental impact statement on issuing such permits announced in a 17 October 2005 *Federal Register* notice (70 Fed. Reg. 60285) or (2) publishing an adequate justification to support a determination that the requirements of the Act, including an assessment of cumulative impacts, can be satisfied in some other way and completing that alternative analysis. The Marine Mammal Commission again recommends that, prior to issuing this permit or other permits authorizing research on right whales, the National Marine Fisheries Service either complete the envisioned programmatic environmental impact statement or provide the public with a reasoned explanation as to why it no longer believes that preparation of an environmental impact statement is necessary to comply with the National Environmental Policy Act. As it has indicated before, the Commission believes that the Service needs to move cautiously and with a clear record of decision if it intends to deviate from its earlier determination that a programmatic environmental impact statement is needed. The Commission encourages the Service to resolve this issue so that important research on this species can proceed with assurance that the cumulative impact of the research on the whales is not significant. It is worth noting that the applicants will be coordinating their research to avoid unnecessary sampling. This type of coordination will be useful in assessing and avoiding cumulative impacts and, in that regard, it would be helpful for the Service to analyze the sampling data to provide a better understanding of potential cumulative impacts on right whales.

If the Service prepares an environmental impact statement regarding its permitting program for right whales or decides to issue the requested permit without preparing an environmental impact statement, the Marine Mammal Commission recommends that any permit authorizing the proposed research (1) be deferred until the applicant has demonstrated that the proposed research has been reviewed and approved by an Institutional Animal Care and Use Committee in accordance with section 2.31 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations and (2) require that the permittee obtain all necessary permits under the Convention on

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International Trade in Endangered Species of Wild Fauna and Flora before importing or exporting any marine mammal parts.

Please contact me if you have any questions concerning these recommendations and comments.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director