

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

13 April 2009

Mr. Timothy J. Van Norman
Chief, Branch of Permits
Division of Management Authority
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Arlington, VA 22203

Re: Permit Application No. PRT-200587
(Alaska Museum of Natural History)

Dear Mr. Van Norman:

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. We offer the following recommendation.

RECOMMENDATION

The Marine Mammal Commission recommends that—

- the Fish and Wildlife Service and the National Marine Fisheries Service, in consultation with the Marine Mammal Commission, work together to resolve their interpretations of the public display provisions of the Marine Mammal Protection Act, and
- in the meantime, the Service defer consideration of this and other public display permit applications seeking authority to display dead marine mammals or their parts and pursue other means of authorizing this display under the Act and the Service's implementing regulations (e.g., 50 C.F.R. § 18.26).

RATIONALE

The applicant is requesting authorization to acquire for purposes of public display a northern sea otter skeleton obtained as a carcass from waters near Homer, Alaska. The Commission is assuming that the animal in question is from the south-central Alaska sea otter stock, which is neither listed under the Endangered Species Act nor designated as depleted under the Marine Mammal Protection Act. The Service should, however, confirm the origin of the carcass.

In principle, the Commission does not object to authorizing such displays. However, it is not clear that display of dead marine mammals or their parts is covered by the public display permit authority of the Marine Mammal Protection Act. In this regard, the National Marine Fisheries Service has issued regulations implementing the Act's public display provisions (section 104(c)(2)) as applying only to the display of living marine mammals. Although the Fish and Wildlife Service may disagree with that interpretation, it has not issued regulations codifying a contrary interpretation of the applicable statutory provision, as amended in 1994. The Commission believes that it is important

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that the agencies tasked with implementing the Marine Mammal Protection Act be consistent in their interpretations. The Marine Mammal Commission therefore recommends that the Fish and Wildlife Service and the National Marine Fisheries Service, in consultation with the Commission, work together to resolve their interpretations of the public display provisions of the Marine Mammal Protection Act. In the meantime, the Marine Mammal Commission recommends that the Fish and Wildlife Service defer consideration of this and other public display permit applications seeking authority to display dead marine mammals or their parts. Instead, the Commission encourages the Service to pursue other means of authorizing this display under the Act and the Service's implementing regulations (e.g., 50 C.F.R. § 18.26).

Please contact me if you have any questions concerning this recommendation.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director