

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

17 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 Nos. PRT-189427, PRT-189429–189432,  
PRT-189434, and PRT-191814 (Applicants Dun, Halstead,  
Atcheson, Wieczorek, Hansen, Hamel, and Neilson  
(submitted by Conservation Force)

Dear Mr. Van Norman:

Thank you for providing the Marine Mammal Commission with a copy of the request submitted by John J. Jackson under 50 C.F.R. § 13.29(a) of the Fish and Wildlife Service's regulations seeking reconsideration of seven enhancement permit applications recently denied by the Service. In each case, the applicant sought an enhancement permit under section 104(c)(4) of the Marine Mammal Protection Act to authorize the importation of a polar bear trophy taken from the Gulf of Boothia management unit in Canada. The Commission appreciates the opportunity to comment on the reconsideration request.

The Commission submitted comments on these permit applications by letter of 16 December 2008. In consultation with its Committee of Scientific Advisors on Marine Mammals, the Commission recommended that the permits be denied based on three grounds. First, drawing on its participation in the negotiations that led to enactment of the enhancement provision and the legislative history of that provision, the Commission believes that there is compelling evidence that Congress intended to exclude sport hunting from this permitting authority. Second, even if an enhancement permit could be issued to authorize sport hunting or the importation of trophies from such hunts, the Commission does not believe that the applicants have met the statutory requirements for such permits. Specifically, the applicants failed to explain how the imports would (1) "contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery" of polar bears in general or the Gulf of Boothia stock in particular, or (2) would address the primary conservation threat faced by polar bears, which is habitat loss associated with climate change. Third, the Commission noted that it would be particularly inappropriate to consider imports from the Gulf of Boothia as an enhancement activity inasmuch as the Service has never approved the population under the Act's trophy import provision (section 104(c)(5)), meaning that it has yet to determine that management is based on scientifically sound quotas ensuring that the population is maintained at a sustainable level. After reviewing the materials submitted by Mr. Jackson, the Commission stands by its earlier recommendations and rationale and believes that denial of the permits was appropriate, given the statutory requirements pertaining to enhancement permits.

Many of the arguments put forth by Mr. Jackson seem to blur the distinction between what constitutes species enhancement under section 101(c)(4) and what constitutes conservation and management more generally under the Marine Mammal Protection Act. In this regard, section 3(2) of the Act defines the terms conservation and management to mean—

the collection and application of biological information for the purposes of increasing and maintaining the number of animals within species and populations of marine mammals at their optimum sustainable population. Such terms include the entire scope of activities that constitute a modern scientific resource program, including, but not limited to, research, census, law enforcement, and habitat acquisition and improvement. Also included within these terms, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

There is little doubt that Canada's polar bear management program, including the allowance for sport hunting, provides socioeconomic benefits to northern Canadian communities, thereby providing incentives for Inuit hunters to support and participate in that program. As the Commission recognized in its comments on the Service's proposed rule to list polar bears as threatened, allowing U.S. hunters to participate in Canadian sport hunting programs has provided some broadscale conservation benefits to polar bear populations, including the infusion of funding for population monitoring and other activities and supplying an incentive for Canada to adopt harvest quotas that meet the Marine Mammal Protection Act's requirement to ensure the maintenance of polar bear populations at sustainable levels. However, not all management and conservation activities (as those terms are defined in the Act) constitute enhancement. For example, research can be useful in identifying enhancement measures and opportunities but is not itself an enhancement activity. Similarly, a robust enforcement program promotes compliance with existing laws and helps achieve the conservation goals of management programs but is not an enhancement activity itself.

Enhancement under section 104(c)(4) constitutes a small subset of conservation and management under the Act. Activities authorized under enhancement permits need to contribute directly and significantly to increasing or maintaining the distribution or numbers of the species or stock and also must be necessary to ensure the species' or stock's survival or recovery. Which enhancement activities are "necessary" will vary among species but likely would include actions such as breeding programs that directly add to the population, the administration of vaccines that improve survival, or translocations that allow a population to reoccupy a former range. Polar bears present a somewhat different situation. Based on the factors identified by the Service in its listing rule, the types of enhancement activities that would be necessary to ensure the survival or recovery of polar bears are those that would somehow halt or slow the loss of sea ice habitat, provide alternative suitable habitats, or improve the prospect for survival of bears as they shift toward terrestrial habitats. None of the applicants is proposing to engage in any such activities. Even the hunting villages are not positioned to address the identified threats. As recognized by Mr. Jackson on page three of his letter, there is "nothing that can be done at the local management planning level

Mr. Timothy J. Van Norman  
17 April 2009  
Page 3

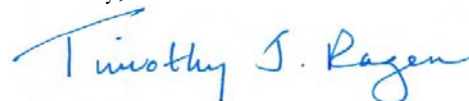
to reduce the alleged future ice melt," which the Service has identified as the central, if not the only, threat to polar bear populations.

Although the distinction may be somewhat technical, we also encourage the Service to focus its review on what the applicants actually are proposing to do. They are seeking enhancement permits to authorize the importation of polar bear trophies that have already been removed from the Gulf of Boothia management unit. Thus, the question at issue is not whether Canada's sport hunting program should be viewed as enhancing the survival and recovery of polar bears but whether the act of importing bears that have already been removed from the population does so. We find it difficult to fathom how importing these trophies will in any conceivable way enhance the status of polar bears except perhaps to encourage other U.S. hunters to participate in future sport hunts.

In a somewhat different context, Mr. Jackson also raises the interesting question of whether enhancement of the Gulf of Boothia polar bear population is even necessary. He argues that compliance with a recovery plan is irrelevant because the population is robust and is not in need of recovery. If his assertion is true, this provides another compelling reason for not issuing an enhancement permit under the Marine Mammal Protection Act. Because taking or importation authorized by an enhancement permit must be necessary to ensure the survival or recovery of a species or stock, it follows that such permits are not appropriate for populations that are not in need of enhancing (i.e., those not in need of recovery or whose survival is not in doubt). Although the Commission agrees with the Service that the threat to the continued existence of polar bears posed by the predicted loss of sea ice is real and warrants the listing of the species under the Endangered Species Act, we find it incongruous for the applicants to be arguing that no recovery actions are needed but that the proposed importations somehow are necessary to ensure the survival and recovery of the Gulf of Boothia population.

Again, thank you for the opportunity to review and comment on the request for reconsideration of these applications. Please call me if you have any questions or would like to discuss any of the points raised in this letter.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director

Enclosure

Cc: Mr. P. Michael Payne