

Marine Mammal Commission
4340 East-West Highway, Room 905
Bethesda, MD 20814

29 July 2009

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. 14502
(Russell Fielding, Louisiana State University)

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 acquire and import an unspecified number of biological specimens (i.e., muscle, blubber, and teeth) from up to 100 Risso's, spinner, and spotted dolphins and short-finned pilot whales collected from animals killed for domestic consumption on St. Vincent and the Grenadines. The applicant is requesting that the permit be valid for three months. The applicant would use the samples to study the levels of toxic contamination in muscle and blubber tissue in cetaceans caught for food in the Caribbean. The proposed project is part of a larger study of the human-environmental interactions involved in cetacean hunts in the Caribbean. We offer the following recommendation.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- issue the permit, provided that it has considered the best available information for the purpose of making at least a preliminary determination that the underlying taking satisfies the humane taking requirement of the Marine Mammal Protection Act;
- condition the permit on the issuance of a valid CITES permit to export samples from St. Vincent and the Grenadines and obtain the U.S. Fish and Wildlife Service's concurrence in the non-detriment findings of any such export permit prior to allowing specimens to be imported into the United States; and
- strongly encourage the applicant to seek out collaborators that could use the samples to conduct genetic analyses and other research that would provide insights into the stock structure of the species, their population dynamics and biology, and the conservation risks they face.

RATIONALE

This application raises several interesting questions about how the permit provisions of the Marine Mammal Protection Act and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) should be interpreted and implemented. These stem primarily from the fact that we have such little information about the stock structure and status of small cetaceans that occur in the Caribbean region or the extent of the hunting pressure and other threats they face.

Section 101(a)(1) of the Marine Mammal Protection Act specifies that the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals are to review all permit applications (except those pertaining to the importation of polar bear trophies under section 104(c)(5)) and recommend approval of those that meet the requirements of section 104 and that are consistent with the purposes and policies set forth in section 2 of the Act. We begin with an examination of whether the activities for which authorization is being sought are consistent with those purposes and policies.

Section 2(6) specifies that the primary objective of marine mammal management under the Act is to “maintain the health and stability of the marine ecosystem.” Whenever consistent with this objective, it should be the goal to obtain an optimum sustainable population of each marine mammal stock, keeping in mind the carrying capacity of the habitat. Consistent with these directives, section 2(2) provides that marine mammal species and stocks should not be permitted to diminish beyond the point at which they cease to be significant functioning elements of the ecosystem of which they are a part and that they should not be permitted to diminish below their optimum sustainable population level. Section 2(3) sets forth Congress’ finding that there is “inadequate knowledge of the ecology and population dynamics of...marine mammals and of the factors which bear on their ability to reproduce themselves successfully.” Implicit in this finding and consistent with the Act’s definition of the terms “conservation” and “management” is a directive for the implementing agencies to take steps to fill those gaps in our knowledge of marine mammals.

The question of whether the proposed activities are consistent with the purposes and policies of the Act hinges largely on how one views the scope of the activities under review. That is, should the Service look at the request for an import authorization in isolation or in conjunction with the underlying taking. Valid arguments can be made to support either interpretation. Section 102(b) of the Act, for example, sets forth a general prohibition on importing certain categories of marine mammals, including depleted species or stocks, but includes an explicit exemption for scientific research and enhancement permits. In contrast, section 104(c)(3)(B) establishes demanding criteria for lethal research involving depleted marine mammals. In our view, and in keeping with the precautionary principle embodied in the Act, these same standards should be applied to stocks that, although not officially designated as depleted, are subject to hunting pressure or other forms of taking that may be unsustainable but for which we do not have enough information to make a determination one way or the other.

If the Service considers only the proposed importation and analysis of specimens, it is easy to argue that these activities will have no impact on the affected cetacean populations. As the applicant notes, “[m]y project will not result, directly or indirectly, in the death, harassment, or disturbance of any cetaceans. I will only take samples from parts of dead cetaceans that were hunted for food by the island’s local inhabitants.” Perhaps more important is the applicant’s indication that he would not pay fishermen for the samples and his assessment that his activities would in no way provide an incentive for hunters to take more cetaceans than they otherwise would. This is a critical distinction that would otherwise argue against allowing in other marine mammal parts and products simply because an animal is already dead and any importation therefore would have no additional impact on the population.

On the other hand, if the Service also considers the impact of the underlying hunt, it would be hard pressed to find that it is consistent with the standards articulated in the purposes and policies of the Marine Mammal Protection Act. There is insufficient information on the stock structure of these cetacean species in the area where the taking would occur. There are no reliable estimates of their abundance or the numbers being removed from the populations. The applicant indicates that these species are taken by hunters only from a single village. His preliminary research in that village, which seems to have been conducted over a relatively short period, indicated that two boats are used to hunt small cetaceans and that each boat takes one to three small cetaceans per day. Anecdotal information provided in the application suggests that a vessel may take as many as 12 cetaceans on a given day. No information is provided as to how frequently hunts are conducted or whether there is any seasonality as to when or how often hunting occurs. Extrapolating from the information provided by the applicant, it is possible that the directed hunting of small cetaceans in this one village alone runs to hundreds of animals per year. The applicant indicates that these same species also are hunted in St. Lucia but gives no details on that hunt. Although not mentioned in the application, it is likely that these species also are subject to other types of human-related removals, such as bycatch in fisheries. Against this backdrop, it would be virtually impossible for the Service to support a finding that the taking of these animals would be consistent with the goal of ensuring that marine mammal stocks are not diminished to or maintained at levels below their optimum sustainable population.

Also to be weighed against the possible adverse population-level impact of the removals of these animals is the potential value of the research, particularly the extent to which it will improve our knowledge of the ecology and population dynamics or, in the context of the lethal taking provision of section 104(c)(3), will directly benefit the species or stocks or fulfill a critically important research need. In this case, the proposed research is designed to look at the human health risks associated with consuming these species of marine mammals, particularly from suspected high concentrations of methyl-mercury. Although this could constitute a critically important research need, the focus of the research clearly is not on improving our knowledge of the ecology and population dynamics of the marine mammals themselves, or even on understanding or addressing the threats faced by the marine mammals from mercury.

The Commission does not believe that the purposes and policies of the Act are best served by an interpretation that looks only at whether an importation of marine mammal parts would

adversely affect the stocks from which they were taken. Rather, we think that it is important to consider where those parts came from and the circumstances under which they were collected. At the same time, we do not believe that the Service should set a hard and fast rule that marine mammal parts can only be imported if an applicant can show that marine mammal stocks were not adversely affected by the taking. This is particularly true in cases of imports for purposes of scientific research designed to further another goal of the Act. In the current instance, the Commission thinks that the balance of these factors weighs in favor of issuing the permit. That is, the research likely will provide useful information and likely will have no adverse impact on the affected populations. We believe that this balance would be tipped further in favor of issuance were the applicant to expand the scope of the proposed research to collect information on the marine mammals as well as on the effects on the people who consume them. The Marine Mammal Commission therefore recommends that the Service strongly encourage the applicant to seek out collaborators who could make additional use of these or additional samples to conduct genetic analyses and other research that would provide insights into the stock structure of these species, their population dynamics and biology, and the conservation risks they face.

Regardless of the purpose for which an animal or part would be imported, the Marine Mammal Protection Act includes a blanket prohibition on the importation of any marine mammal (including any marine mammal part) that was taken in violation of the Act or in violation of the laws of the country of origin. In this case, the taking is being carried out by nationals of St. Vincent and the Grenadines within the territorial sea and/or the Exclusive Economic Zone of St. Vincent and the Grenadines. Thus, although it may not comport with the requirements that would apply were the taking to occur in an area or by individuals subject to the jurisdiction of the United States, the taking, technically, is not being conducted in violation of the Marine Mammal Protection Act. Similarly, as far as we are aware, all of the marine mammals from which specimens would be collected were taken in conformance with the applicable laws of St. Vincent and the Grenadines.

Section 104(b) sets forth certain requirements generally applicable to all permits. It requires that the Service specify the location and manner in which marine mammals may be taken and determine that the manner of taking is humane. The term “humane” is defined in the Act to mean “that method of taking which involves the least degree of pain and suffering practicable to the mammal involved.” A threshold question is whether the humaneness requirement is applicable to permits that do not directly authorize the taking of marine mammals but only the importation of marine mammals or marine mammal parts that were taken by someone else. In other contexts, the Marine Mammal Commission has recommended that the Service consider whether the underlying taking was humane, regardless of when, or by whom, the animals were taken. The Service previously has agreed with this advice, for instance looking at the humaneness of capture methods when public display facilities proposed importing small cetaceans collected in Japan’s drive fishery. Based on these precedents, the Commission believes that the Service must consider whether the hunting of the small cetaceans from which samples would be collected is humane.

The killing methods used in St. Vincent and the Grenadines are described by the applicant and involve initial striking with a harpoon, followed, if necessary, by a second harpoon strike and/or strikes from a handheld lance. Time to death during the applicant’s preliminary observations ranged

from 5 to approximately 15 minutes. Presumably, other hunting methods would lead to significantly shorter times to death and presumably less pain and suffering to the animals. The question is whether those alternatives (e.g., the use of firearms to dispatch animals) are practicable in the context of these subsistence hunts. Although the applicant may have useful information in this regard, this issue would be better pursued by the Service's Office of International Affairs in consultation with officials from St. Vincent and the Grenadines. Such follow-up will require some time and the Commission does not believe it necessary to postpone the issuance of this permit until that follow-up has been completed. Rather, the Marine Mammal Commission recommends the Service issue the permit, provided that it has considered the best available information for the purpose of making at least a preliminary determination that the underlying taking satisfies the humane taking requirement of the Act.

Finally, under section 104(c)(3) of the Marine Mammal Protection Act, the applicant must demonstrate that the proposed taking or importation is required to further a bona fide scientific purpose. The three criteria for making such a determination are whether the results of the research (1) likely would be accepted for publication in a refereed scientific journal, (2) are likely to contribute to the basic knowledge of marine mammal biology or ecology, or (3) are likely to identify, evaluate, or resolve conservation problems. It appears that the proposed research satisfies at least the first criterion and therefore constitutes bona fide research for purposes of the Act. It is possible that the research also might meet the other criteria, but the applicant has not addressed how the information from his research will be used to expand our understanding of marine mammals or the conservation problems they face.

All of the species that would be included in the proposed permit are listed on Appendix II of CITES. As such, and independent of the permit requirements applicable under the Marine Mammal Protection Act, the importation of the specimens will require that St. Vincent and the Grenadines issue a CITES export permit. The key findings that the exporting country must make are that (1) the specimens were obtained in compliance with applicable law and (2) the export will not be detrimental to the survival of the species. The first of these findings parallels the requirements of the Marine Mammal Protection Act. We note, however, that the requirement to obtain a CITES permit provides additional validation that St. Vincent and the Grenadines has made an affirmative finding that the animals were taken in compliance with its laws.

The second finding also raises an issue similar to one raised under the Marine Mammal Protection Act. That is, in making a non-detriment finding, does a country only look at the impact of the export on the populations or also consider the impact of the underlying taking. We have been advised by the Fish and Wildlife Service, the agency with responsibility for administering the CITES program within the United States, that in making such a finding, a country needs to look at the impact of the taking, not just the export or import. This being the case, the Commission is concerned that there is an insufficient basis for St. Vincent and the Grenadines to make a legitimate finding that the hunting of cetaceans by its nationals, and the export of scientific specimens from that source, would not be detrimental to the survival of those species. The Marine Mammal Commission therefore recommends that the Service condition any permit it may issue on issuance of a valid CITES export permit from St. Vincent and the Grenadines. The Marine Mammal

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Commission further recommends that the National Marine Fisheries Service consult with the Fish and Wildlife Service and, as appropriate, ask the Fish and Wildlife Service to review and concur in the findings of any such export permit prior to allowing specimens to be imported into the United States.

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director