



MARINE MAMMAL COMMISSION

5 April 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. 14586
(Florida Atlantic 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 seeking authorization to take by harassment several species of cetaceans, including North Atlantic right whales, during aerial and vessel surveys to obtain baseline data on the temporal and spatial distribution of sea turtles and marine mammals in the Straits of Florida and Gulf Stream Current.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the permit, with the exception that authorization to take right whales be deferred until the Service has resolved the National Environmental Policy Act issues concerning research on this species and has prepared the necessary environmental analyses.

RATIONALE

The applicant is requesting authorization to take by harassment various numbers of 14 species of cetaceans, including up to 25 North Atlantic right whales annually, over a five-year period during aerial and vessel surveys. Aerial surveys would be conducted once a month throughout the year using high-wing aircraft flying at an altitude of 150 m with a ground speed of 75 to 100 kn. Vessel surveys would be conducted once a month throughout the year using a 33-ft boat. Aerial and vessel surveys each would encompass nearshore and offshore areas out from Ft. Lauderdale north to Jupiter, Florida, and across the Florida Straits to the Bahamas.

The Marine Mammal Commission recommends that the National Marine Fisheries Service authorize the taking by harassment of the requested species with the exception of right whales. The Commission likely would recommend that authorization be granted to conduct the proposed activities on right whales, were it not for the lack of a well-founded analysis under the National Environmental Policy Act that considers the potential cumulative effects of research and other activities on the species. Consequently, the Marine Mammal Commission recommends that the National Marine Fisheries Service defer authorization on this and other requests to take North Atlantic right whales until it (1) has completed the programmatic environmental impact statement

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on issuing permits authorizing research on right whales announced in a 17 October 2005 *Federal Register* notice (70 Fed. Reg. 60285) or (2) has provided an adequate justification for deciding to comply with the requirements of the National Environmental Policy Act in some other way and has completed that alternative analysis. As it has indicated in a number of recent letters regarding this issue, 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. As it also has indicated, the Commission strongly encourages the Service to resolve this issue as quickly as possible to enable important research on this species to proceed.

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director