



MARINE MAMMAL COMMISSION

28 September 2015

Ms. Jolie Harrison, Chief
Permits and Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Re: Permit Application No. 18636
(Iain Kerr, D.H.L., Ocean Alliance)

Dear Ms. Harrison:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the above-referenced permit amendment application with regard to the goals, policies, and requirements of the Marine Mammal Protection Act (the MMPA). Dr. Kerr is proposing to conduct research on cetaceans in the Pacific and Atlantic Oceans during a five-year period—similar activities were authorized under permit 13545.

Dr. Kerr proposes to conduct research year-round on cetaceans in U.S. waters and on the high seas of the Pacific and Atlantic Oceans, including the Gulf of Mexico and Caribbean Sea. The objectives are to determine how environmental contaminants affect cetaceans, how those contaminant concentrations vary spatially and temporally across species, and the route of exposure. Dr. Kerr would harass, observe, conduct focal follows on, biopsy sample, videotape/photograph, conduct photogrammetry on, and acoustically record numerous individuals of various age classes and sexes of numerous cetacean species (see the Take Tables). He would not biopsy sample calves less than 6 months of age or females with those calves. Dr. Kerr also would collect breath samples using an unmanned aerial system (UAS)¹ and sloughed skin and feces using nets. He could import or export the samples² for analyses.

To minimize disturbance during biopsy sampling, vessels would approach the animals parallel and at low speeds. Dr. Kerr also would avoid calves less than 6 months of age during UAS overflights and breath sampling. If the UAS caused a behavior change in any animal, the UAS flight would be terminated immediately. All other research activities conducted near females and calves would be terminated if moderate or strong behavioral disturbance (e.g., cessation of feeding or apparent nursing behavior, occurrence of high-energy behaviors such as breaching, tail-breaching, lobtailing, or rapid evasive movement) is observed. In addition, the vessel would never be positioned

¹ The UASs proposed for use could weigh up to 5 kg and could include forward-looking infrared technology to track whales at night.

² Including samples from live and dead southern right whales obtained in South America and from dead-stranded animals elsewhere.

between a female and her calf. Dr. Kerr indicated that his Institutional Animal Care and Use Committee has reviewed and approved the research protocols.

The Commission understands that Dr. Kerr included the number of target and non-target animals harassed incidental to the proposed activities within the same row of the Take Tables for each species or group. For example, he proposed to harass up to 20 unidentified dolphins and 20 long- and 20 short-finned pilot whales during all of the various proposed activities in the Atlantic Ocean. The Commission is not convinced those numbers of takes are sufficient for the proposed activities, nor are they comparable to other permits that authorize the same activities. For example, the mean group size³ of short-beaked common dolphins is 39 animals, 52 for striped dolphins, 43 for spinner dolphins, and 15 for bottlenose dolphins. Similarly, the mean group size for pilot whales is 20 animals. Since NMFS considers any approach⁴ of a cetacean a take regardless of whether the animal reacts, Dr. Kerr could reach his allotted 20 takes with a single approach to biopsy sample one of those previously specified odontocetes. Therefore, the Commission recommends that NMFS issue the permit, provided it increases the number of incidental takes for the numerous odontocete species or groups listed in the Take Tables to ensure the authorized takes are sufficient given the methods and procedures to be used during the proposed activities.

Additionally, while the Commission recognizes that the proposed takes in Dr. Kerr's application and the authorized takes in similar permits are for the entire North and South Atlantic, including the Gulf of Mexico and Caribbean Sea, some small populations such as Bryde's whales in the Gulf of Mexico could be unduly impacted in the unlikely event that all or the majority of takes by Dr. Kerr and other researchers were directed at them. The intention to undertake targeted research on small populations generally is noted in permit applications and/or is managed through section 7 consultations under the Endangered Species Act, but it is important for NMFS to continue to be alert to the need to minimize risk to such populations.

The Commission believes that the proposed activities are consistent with the purposes and policies of the MMPA. Please contact me if you have any questions concerning the Commission's recommendation.

Sincerely,



Rebecca J. Lent, Ph.D.
Executive Director

³ Effort-weighted data based on the Atlantic Marine Assessment Program for Protected Species surveys from 2010, 2011, and 2013.

⁴ Which includes drifting or directly approaching a cetacean or group of cetaceans closer than 50 yards for all odontocetes except sperm whales.