



MARINE MAMMAL COMMISSION

21 December 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. 15415
(Scott D. Kraus, Ph.D.,
New England Aquarium)

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 conduct research on North Atlantic right whales along the U.S. East Coast from New York Harbor to the Maine-Canada border during a three-year period.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service refrain from issuing the requested permit until it either completes a programmatic environmental impact statement or provides a reasoned explanation as to why it no longer believes that preparation of an environmental impact statement is necessary to comply with the National Environmental Policy Act. If the Service decides to issue the requested permit notwithstanding resolution of this issue, the Marine Mammal Commission recommends that the National Marine Fisheries Service ensure that the proposed research has been reviewed and approved by an Institutional Animal Care and Use Committee in accordance with section 2.31 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations.

RATIONALE

The applicant proposes to take by harassment up to 200 North Atlantic right whales per year during experimental trials to determine if right whales are responsive to various color and light stimuli. In the experimental trials, a rope mimic consisting of colored and illuminated rigid pipe would be placed in the water near the traveling path of a juvenile or adult whale to elicit a response. The applicant would use pipes that are too long to fit in a whale's mouth and too rigid to entangle in an appendage. Control trials also would be conducted. The applicant would approach by vessel, photo-identify, observe, and monitor the whales during all trials. The purpose of the proposed research is to determine whether sensory and behavioral capabilities of right whales can be used to avoid entanglements at depth and in conditions of poor visibility. The evaluations of visual

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deterrents to reduce right whale entanglement in fishing gear are a long-standing priority of the Atlantic Large Whale Take Reduction Team.

Since 2005 the Commission has recommended that the Service defer consideration of permit applications and amendment requests seeking authorization to take North Atlantic and North Pacific right whales until it resolves issues pertaining to compliance with the National Environmental Policy Act. The Service may do so either by (1) completing the programmatic environmental impact statement on issuing such permits announced in a 17 October 2005 *Federal Register* notice (70 Fed. Reg. 60285) or (2) publishing an adequate justification to support a determination that the requirements of the Act, including an assessment of cumulative impacts, can be satisfied in some other way and completing that alternative analysis. The Marine Mammal Commission again recommends that, prior to issuing this permit or other permits authorizing research on right whales, the National Marine Fisheries Service either complete the envisioned programmatic environmental impact statement or provide the public with a reasoned explanation as to why it no longer believes that preparation of an environmental impact statement is necessary to comply with the National Environmental Policy Act. As it has indicated before, 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. The Commission encourages the Service to resolve this issue so that important research on this species can proceed with assurance that the cumulative impact of the research on the whales is not significant.

If the Service prepares an environmental impact statement regarding its permitting program for right whales or decides to issue the requested permit without preparing an environmental impact statement, the Marine Mammal Commission recommends that any permit authorizing the proposed research be deferred until the applicant has documented that the proposed research has been reviewed and approved by an Institutional Animal Care and Use Committee in accordance with section 2.31 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations. The Commission understands that the New England Aquarium has an Institutional Animal Care and Use Committee that reviews all proposed research. The Service should have a copy of the Committee's approval of this research before it is initiated.

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director