

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

13 February 2009

Ms. Nadene G. Kennedy  
Permit Office, Room 755  
Office of Polar Programs  
National Science Foundation  
4201 Wilson Boulevard  
Arlington, VA 22230

Dear Ms. Kennedy:

By notice in the *Federal Register* dated 12 January 2009 (74 Fed. Reg. 1251), your office requested comments on a permit modification request from Ross D.E. MacPhee, Ph.D., seeking authorization under the Antarctic Conservation Act of 1978 to collect bones and teeth of marine mammals for destructive isotope analysis.

#### **RECOMMENDATION**

The Marine Mammal Commission recommends that the National Science Foundation—

- issue the requested authorization only after it has confirmed that the National Marine Fisheries Service either has issued a permit under the Marine Mammal Protection Act to authorize the proposed activities or has determined that a permit is not required; and
- advise the permit-holder of the possible need to obtain an authorization under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and suggest that he consult with the Fish and Wildlife Service concerning the applicable requirements.

#### **RATIONALE**

The *Federal Register* notice does not indicate whether the permit-holder has obtained or is seeking a permit for the proposed activities under the Marine Mammal Protection Act. Alternatively, the proposed activities might be covered by the National Marine Fisheries Service's regulations at 50 C.F.R. § 216.26, which provide for the collection of bones, teeth, or ivory of any dead marine mammal from a beach or from land within one-quarter mile of the ocean without prior authorization. However, those regulations do not specify whether that regulatory exception only applies within the United States or also applies to the activities of U.S. nationals operating in the global commons of Antarctica. On his part, the permit-holder should indicate whether he intends to import the teeth and bones into the United States to conduct the proposed analyses. If that is the case, the Service also needs to determine whether such imports would be authorized under the regulations or whether an import permit would be needed. Finally, the regulations at 50 C.F.R. § 216.22(c) require that the permit-holder register the collected materials within 30 days of collection, and he may not be able to do so because he will be collecting the materials in Antarctica.

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The Commission believes that the National Marine Fisheries Service is the appropriate agency to interpret its regulations and believes that the National Science Foundation should refrain from issuing the permit modification until it has determined that the planned activities would be carried out in compliance with the Marine Mammal Protection Act. The Marine Mammal Commission therefore recommends that the National Science Foundation issue the requested authorization only after it has confirmed that the National Marine Fisheries Service either has issued a permit under the Marine Mammal Protection Act to authorize the proposed activities or has determined that a permit is not required.

Further, if the permit-holder intends to import teeth and bones of marine mammals collected in Antarctica into the United States, then, depending on the species involved (e.g., all *Arctocephalus* species and all cetaceans are listed on the CITES appendices), the permit-holder also may need to obtain an authorization under CITES. The Marine Mammal Commission therefore recommends that the National Science Foundation advise the permit-holder of the possible need to obtain an import permit under CITES and suggest that he consult with the Fish and Wildlife Service concerning the applicable requirements.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director

Cc: Mr. P. Michael Payne  
Mr. Timothy J. Van Norman