



MARINE MAMMAL COMMISSION

28 January 2011

Mr. James H. Lecky
Director, Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910-3225

Re: Transfer of dolphins from the U.S. Navy to the
Institute for Marine Mammal Studies

Dear Mr. Lecky:

Earlier today your office provided the Marine Mammal Commission with a copy of a letter to the Navy authorizing the transport of two bottlenose dolphins from the U.S. Navy's Marine Mammal Program to the Institute for Marine Mammal Studies in Gulfport, Mississippi. As indicated in that letter, the animals that would be transported were collected and are being maintained by the Navy under the authority of 10 U.S.C. § 7524. That provision authorizes the Department of Defense, with the concurrence of the Secretary of Commerce and after consultation with the Marine Mammal Commission, to take up to 25 marine mammals each year for national defense purposes.

In an e-mail exchange with your office on 20 January requesting additional information concerning the proposed transport of dolphins, the Commission indicated that it intended to comment on this proposal. The Service provided some, but not all of the information that we requested. Specifically, we were waiting for information regarding the numbers and species of any past transfers from the Navy to display or research facilities, the ages and sexes of any such animals, the purposes of any such transfers, and the eventual fates of the animals (e.g., were they returned to the Navy). Thus, it with some surprise that we received your letter indicating that the transfer had been authorized and noting that the Marine Mammal Commission did not provide comments.

The Marine Mammal Commission has several concerns regarding the proposed transport and requests that the authorization be withdrawn pending further review of this matter. First and foremost, the Commission questions whether animals taken under the authority of 10 U.S.C. § 7524 for national defense purposes can be used for other purposes absent some additional authorization (e.g., a public display permit). Although the transfer of a marine mammal to a facility that meets the three basic requirements for obtaining a public display permit is allowed under section 104(c)(2)(C) of the Marine Mammal Protection Act without the issuance of an additional permit, that provision only applies to animals currently maintained under the authority of that Act. It does not apply to marine mammals maintained in captivity under other laws (e.g. 10 U.S.C. § 7524).

The Commission is aware that Navy dolphins have been sent to public display facilities on breeding loans in the past. In fact, in at least one instance, the Commission has concurred with such a loan (see enclosed 27 May 2005 letter). However, we think that the current request is different and

requires further consideration by the Service. Admittedly, a breeding loan is not a national defense purpose and, as such, does not fit squarely under the authority 10 U.S.C. § 7524. Nevertheless, the Commission was comfortable with allowing a temporary breeding loan of marine mammals maintained under that provision in light of the fact that those animals were (1) to remain under the custody of the Navy and (2) were to be under the supervision of the Navy's Senior Scientist for Animal Care while at the facility. In the case of the Institute for Marine Mammal Studies, the transfer would not be for breeding purposes, but for purposes of public display. In fact, the facility has no dolphins with which to breed the Navy animals. Also, while the information provided by the Service indicates that dolphins will remain under the custody of the Navy, it is not clear who would be responsible for the care and maintenance of the animals at the Institute for Marine Mammal Studies.

Subsection (b) of 10 U.S.C. § 7524 specifies that marine mammals taken under that provision are to be "captured, supervised, cared for, transported, and deployed in a humane manner consistent with conditions established by the Secretary of Commerce." Presumably, the Service established such conditions when it concurred in the authorization to remove the animals from the wild in the first instance. If so, we would like to review those conditions to determine whether a transfer of the animals to a public display facility is consistent with them. We also would like to be advised of any conditions applicable to the proposed transport of the animals to the Institute for Marine Mammal Studies, including any term of the agreed upon loan.

The Commission has been advised that the proposed transport is being carried out under the terms of a settlement agreement in a lawsuit brought by the Institute for Marine Mammal Studies. Nowhere, however, does that agreement specify the rationale for the Service's (or the Navy's, who was not a party to that litigation) belief that applicable law allows for the public display of Navy dolphins. The Commission would appreciate receiving such a rationale or, alternatively, having the opportunity to discuss this issue with your office, the Navy, and the appropriate agency legal counsel before the proposed transfer takes place. Although, transport of the dolphins reportedly will occur this coming Sunday or Monday, there does not appear to be a compelling reason for moving the dolphins quickly. Absent such a reason, the Service should take time to resolve these issues before the animals are moved.

Please let me know if you would have any questions concerning the Commission's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy J. Ragen" followed by a flourish and the word "for".

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure

cc: Lois J. Schiffer, General Counsel, NOAA
Thomas N. Ledvina, Deputy General Counsel, U.S. Navy
Michael J. Rothe, SPAWARSYSCEN D35