



# MARINE MAMMAL COMMISSION

11 June 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, Maryland 20910

Re: Permit Application No. 14245  
(National Marine Mammal Laboratory)

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 take by harassment specified numbers of 33 species of marine mammals, including endangered blue, sei, fin, sperm, North Pacific right, bowhead, humpback, southern resident killer, and Cook Inlet beluga whales, in the Pacific, Southern, Atlantic, and Arctic Oceans over a five-year period.

## RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- defer issuance of the permit until the research protocol has been reviewed and approved by an Institutional Animal Care and Use Committee (IACUC) and the applicant has demonstrated that it is in compliance with section 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations;
- withhold authorization for any future amendment of the permit pending review and approval by an IACUC of all of the research activities covered by the permit and any proposed changes;
- defer action on this permit as it pertains to North Pacific right whales until the Service has resolved how best to comply with the National Environmental Policy Act and has prepared the necessary environmental analyses;
- before authorizing tagging activities involving calves and their mothers, (1) obtain information from the applicant on how it intends to determine the age of calves (i.e., distinguish neonates from older calves), (2) be satisfied that the applicant has provided adequate justification for biopsy sampling and tagging non-neonate calves and females accompanied by such calves, particularly for species listed as threatened or endangered; and (3) be satisfied that post-tagging monitoring will be adequate to determine the impact of tagging on these animals;

- withhold authorization for biopsy sampling or tagging any female cetacean accompanied by a neonate calf; and
- condition the permit, if issued, on a requirement the investigator to (1) take all steps necessary to ensure that activities to be conducted under this permit and those of other permit holders who might be carrying out research on the same species in the same areas are coordinated to avoid unnecessarily duplicative research and unnecessary disturbance of animals; and (2) obtain all necessary permits under the Convention on International Trade in Endangered Species of Wild Fauna and Flora before importing samples into or exporting them out of the United States.

## **RATIONALE**

The applicant requests a permit to continue ongoing studies of whale and dolphin trends, abundance, and distribution. The research includes aerial and vessel surveys and close approach to animals for photo-identification, biopsy sampling, and tagging. The applicant would biopsy (up to four times annually) and tag (using suction cup and/or implantable tags) individual animals of both sexes and all ages for studies of distribution, prey selection, reproductive status, health, and condition. The only exceptions would be that neonates would not be tagged or sampled and implantable tags would not be used on calves older than neonates. The applicant would capture small and medium-sized cetaceans (e.g., beluga whales, Dall's porpoises, and harbor porpoises) for health assessments, attachment of satellite and/or VHF telemetry tags to dorsal fins or dorsal surfaces, biopsy and biological sampling, and/or short-term attachment of time-depth recorders by suction cup. The applicant is requesting authorization for the unintentional death of up to four beluga whales from each Alaska stock (other than the Cook Inlet stock) and up to four individuals from each species of porpoise, annually. The Service states that it does not intend to authorize any captures or deaths of endangered Cook Inlet beluga whales at this time but will prepare analyses of these activities under the National Environmental Policy Act and the Endangered Species Act when authorization of such activities is sought in the future. The applicant also is requesting authorization to salvage and import/export cetacean parts, specimens, and biological samples collected during these projects. Up to eight pinniped species, including Steller sea lions, would be harassed incidental to conducting aerial surveys, which would be conducted at altitudes below 1,000 ft.

## **IACUC Review and Approval**

The Service has adopted a policy that permit applications from its science centers will not be considered if applicants do not provide proof that an IACUC has reviewed and approved the proposed studies. However, that policy does not apply to applications received by the Permits Office prior to 31 December 2009. This application was received by the Permits Office on 2 October 2009, and the Service has chosen to accept it despite the fact that doing so is inconsistent with the Animal Welfare Act. Having expressed its disagreement on this point on numerous occasions, the Marine Mammal Commission again recommends that the National Marine Fisheries Service defer issuance of this permit until the research protocol has been reviewed and approved by

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an IACUC and the applicant has demonstrated that it is in compliance with section 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations.

The applicant is proposing to extract teeth and collect muscle biopsies from the subject animals and attach implantable tags to them. In one part of the application, the applicant states that "[n]o anesthetic or other drugs...will be used during research with the exception of Novocain or equivalent for tooth extraction." However, elsewhere in the application the applicant discusses the attachment of instrument packs on Dall's and harbor porpoises and states that "[a]fter package positioning, a local anesthetic may be applied to the pin sites and 18 gauge needles will be inserted to serve as alignment guides for the pin holes." Before issuing this permit, the Service should seek clarification from the applicant as to precisely what anesthetics and other drugs would be used during biopsy sampling, tagging procedures, tooth extraction, and other potentially painful procedures to minimize pain and suffering to the extent practicable. These types of ambiguities in the proposed activities, protocols, and procedures highlight the need for and usefulness of IACUC review, which would surely be in the best interests of the subject animals.

The Marine Mammal Commission further recommends that, if the National Marine Fisheries Service decides to issue the requested permit absent review and approval by an IACUC, the Service withhold authorization for any amendment of the permit pending review and approval by an IACUC of all of the research activities covered by the permit and any proposed changes to it.

### **North Pacific Right Whales**

The applicant is requesting authorization to take North Pacific right whales by harassment (e.g., aerial and vessel surveys, biopsy sampling up to four times annually, and tagging using suction cup and/or implantable tags). The applicant would biopsy sample and tag individual animals of both sexes and all ages except neonate calves (implantable tags would not be used on calves older than neonates). Such studies could provide valuable information on the North Pacific right whale, particularly animals that occur in the eastern North Pacific.

However, for this particular species, the proposed studies present a difficulty. That is, the Service has placed in the record (70 Fed. Reg. 60285) an opinion that the combined research on the northern right whale may have cumulative effects that should be evaluated and, by implication, may be unacceptable. At that time (i.e., 2005), the northern right whale was recognized as including right whales in both the North Atlantic and North Pacific Oceans and, therefore, the Service's statement applied to both populations. The Service has subsequently recognized North Atlantic and North Pacific right whales as separate species, but it has not yet addressed the previously stated need for a cumulative effects analysis for right whales in either ocean basin. The Commission does not anticipate that research on the North Pacific right whale poses a significant cumulative risk because, in fact, relatively little research is being done on those whales. At the same time, such an analysis is a reasonable precaution because the purported eastern population may include fewer than 100 animals, and any potential risks to the population should be carefully considered beforehand. That being the case, the Service should complete an analysis of the potential effects, including their cumulative impact, in the originally envisioned programmatic environmental impact statement or it

should provide an adequate justification for complying with the requirements of the National Environmental Policy Act in some other way. The Commission continues to believe that preparation of environmental assessments on individual applications does not provide an adequate mechanism for analyzing cumulative effects from multiple activities under a number of separate permits. If that is the case, then the Service leaves itself vulnerable to challenge on this point and, more importantly, may inadvertently expose the North Pacific right whale to unacceptable risks. Therefore, the Marine Mammal Commission reiterates its previous recommendation that the National Marine Fisheries Service defer action on this permit as it pertains to North Pacific right whales until the Service has resolved how best to comply with the National Environmental Policy Act and has prepared the necessary environmental analyses. The Commission also urges the Service to resolve this issue as quickly as possible to enable needed research on this species to proceed.

### **Research on Mother-Calf Pairs**

The applicant is requesting authorization to biopsy sample and tag animals of all ages except neonate calves. Tagging would involve use of suction cups and/or implantable tags, although implantable tags would not be used on calves of any age. As noted in its previous letters, the Commission continues to believe that this type of research (i.e., tagging, biopsy sampling) involving mother-calf pairs must be done with extra caution because it poses some additional risks to calves, which are the most vulnerable segment of any marine mammal population. The Marine Mammal Commission therefore recommends that, before authorizing tagging activities involving calves and their mothers, the National Marine Fisheries Service (1) obtain information from the applicant on how it intends to determine the age of calves (i.e., distinguish neonates from older calves), (2) be satisfied that the applicant has provided adequate justification for biopsy sampling and tagging non-neonate calves and/or females accompanied by such calves, particularly for species listed as threatened or endangered; and (3) be satisfied that post-tagging monitoring will be adequate to determine the impact of tagging on these animals. The Marine Mammal Commission further recommends that the National Marine Fisheries Service withhold authorization for biopsy sampling or tagging any female cetacean accompanied by a neonate calf.

Finally, the Marine Mammal Commission recommends that the National Marine Fisheries Service condition the permit, if issued, on a requirement the investigator to take all steps necessary to ensure that activities to be conducted under this permit and those of other permit holders who might be carrying out research on the same species in the same areas are coordinated to avoid unnecessarily duplicative research and unnecessary disturbance of animals, and the investigator obtain all necessary permits under the Convention on International Trade in Endangered Species of Wild Fauna and Flora before importing samples into or exporting them out of the United States.

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The Commission believes that the activities for which it has recommended approval are consistent with the purposes and policies of the Marine Mammal Protection Act.

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

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director