

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

7 May 2009

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: Request for Amendment of Permit No. 782-1812
(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 request with regard to the goals, policies, and requirements of the Marine Mammal Protection Act. The Commission offers the following recommendation.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service suspend further consideration of this amendment request until the National Marine Mammal Laboratory demonstrates full compliance with section 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations.

RATIONALE

Permit No. 782-1812 authorizes the permit-holder to take annually by harassment the following species: California sea lions (up to 1,360 pups, 60 juveniles, 110 adult females, and 10 adult males); harbor seals (up to 30 pups, 30 juveniles, and 40 adults); northern elephant seals (up to 10 adult females and 10 adult males); and northern fur seals (up to 400 pups). Taking would be by capture, tagging, branding, or dye-marking, physical restraint or chemical immobilization, chemical/gas anesthesia, instrumentation, tissue biopsy, tissue sampling, anti-helminthic injection (California sea lions only), milk sampling, and euthanizing of orphaned, moribund, and premature pups. The permit also authorizes the harassment of up to 37,000 California sea lions, 1,750 harbor seals, 1,810 elephant seals, and 1,100 fur seals annually incidental to the proposed research activities. In addition, the permit authorizes the accidental mortality over five years of up to 30 California sea lions (20 pups, 4 juveniles, 4 adult females, and 2 adult males); 6 harbor seals (2 pups, 2 juveniles, and 2 adults); 4 northern elephant seals (2 juveniles and 2 adults); and 10 northern fur seal pups. It also authorizes the euthanizing of any pups orphaned as a result of the proposed research activities and up to 90 premature pups and 90 moribund full-term pups. The permit-holder is authorized to conduct these activities in the California Channel Islands.

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The permit-holder is requesting that the permit be amended to authorize, among other things, an increase in the number of California sea lions to be taken as follows: the harassment of up to 59,790 animals (both sexes and all ages) incidental to live and dead pup censuses and brand-resighting surveys; the harassment of up to 15,550 animals (both sexes and all ages) incidental to the research activities, excluding live and dead pup surveys and brand-resighting surveys; the capture, restraint (physical and/or chemical/gas), sampling (including biopsy sampling), marking (including hot-branding), tagging, and recapture of up to 280 pups (4 to 11 months of age) for health condition studies; the evaluation of various handling and marking methods on up to 950 pups; the evaluation of various methods of chemical immobilization on up to 20 adult males; and the conduct of remote marking and biopsy-sampling trials on up to 130 adult males and up to 1,200 pups (2 to 3 months of age) to investigate the breeding system using molecular genetics and behavioral observations.

The Marine Mammal Commission commented on the permit-holder's original permit application by letter of 18 April 2006 (enclosed). Among other things, the Commission noted the need for the applicant to establish an Institutional Animal Care and Use Committee (IACUC) as required under Animal Welfare Act and the Animal and Plant Health Inspection Service's regulations implementing that statute. The Commission recommended that issuance of the permit be deferred until the applicant had come into compliance with the applicable Animal Welfare Act requirements and the proposed research had been reviewed by an IACUC. Despite the Commission's recommendation and the applicant's failure to comply with the unambiguous requirements of the Animal Welfare Act, the Service issued the permit.

Now more than three years later, we are faced with a nearly identical situation. The permit-holder still has not established an IACUC and continues to conduct research that involves invasive procedures and that can materially alter the behavior of the animals under study—two of the criteria that trigger the need for the review of field studies by such a committee under the applicable regulations. The permit-holder now seeks to expand the scope of the studies and increase the number of animals that would be subject to invasive procedures in blatant disregard of the Animal Welfare Act requirements and without the benefit of an IACUC review.

Last August you wrote to inform the Commission that the Service agreed with our assessment that the establishment and use of IACUCs are required for these types of studies. You indicated that the Service had adopted a policy to establish IACUCs by 1 October 2009 with the "goal of having all research proposals and grants reviewed by 2010."

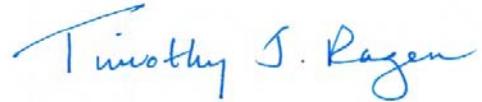
As we have indicated before, the proposed implementation schedule is much too slow. The Service and this particular permit-holder have been on notice for more than three years that it was out of compliance with the Animal Welfare Act. Since the Commission first raised this issue, no credible case has been made that the IACUC requirements somehow do not apply to federal researchers in general or to the Service's science centers and laboratories in particular. As the permitting agency, the National Marine Fisheries Service should be setting an example for other applicants to follow, rather than being the sole outlier when it comes to complying with the requirements pertaining to the use of IACUCs. The time has come for the Service to meet its responsibilities under the Animal Welfare Act, and further delay in coming into compliance should

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not be countenanced. The Marine Mammal Commission therefore recommends that further consideration of this amendment request be suspended until the National Marine Mammal Laboratory demonstrates full compliance with section 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations. Doing so will give the Permits Division, the Commission, and other reviewers the benefit of an IACUC's review of the proposed research as they take action on the proposed amendment.

Please contact me if you have any questions concerning this recommendation.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is fluid and cursive, with "Timothy" on top, "J." in the middle, and "Ragen" on the bottom.

Timothy J. Ragen, Ph.D.
Executive Director

Enclosure

cc: Barbara A. Kohn, D.V. M.