



MARINE MAMMAL COMMISSION

11 February 2010

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 17 December 2009 (74 Fed. Reg. 66997), the National Science Foundation requested comments on a permit modification request from Douglas P. Nowacek, Ph.D., Duke University. Dr. Nowacek is seeking authorization under the Antarctic Conservation Act of 1978 to expand currently authorized research activities on humpback and minke whales under Permit No. 2009-014.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Science Foundation—

- adopt a general policy to require that the permit holder or the applicant seeking authorization under the Antarctic Conservation Act to conduct research on marine mammals in areas subject to that Act also be the same applicant or permit holder seeking authorization under the Marine Mammal Protection Act, or
- if that is not possible, strengthen its coordination efforts with the National Marine Fisheries Service's permit division to determine precisely which researchers are authorized (or requesting authority) to conduct what activities, under what permit or permits, as part of its review and make that information available as part of the public comment process.

Specific to this modification request, the Marine Mammal Commission recommends that the National Science Foundation consult the permit holder to clarify whether the numbers specified in the request refer to the number of samples to be collected, the number of animals to be approached (perhaps multiple times each), or the total number of approaches that will be attempted. Although the requested authorization appears to be consistent with the requirements of the Marine Mammal Protection Act, the Commission cannot make an informed decision on the request without this information.

RATIONALE

In several recent letters, the Marine Mammal Commission has identified difficulties that arise when individuals are applying for research permits under the Antarctic Conservation Act to study marine mammals, but do not possess, or are not also seeking, a research permit under the Marine Mammal Protection Act. In many cases, these researchers may be relying on someone else's Marine Mammal Protection Act permit to authorize the proposed activities, although this is not always apparent from the application. The current amendment request presents a slight variation on this theme in that Dr. Nowacek already has been issued a permit under the Antarctic Conservation Act and is now seeking a modification to expand the authorized activities. However, to our knowledge, Dr. Nowacek does not possess—and has not applied for—a permit under the Marine Mammal Protection Act to conduct either the previously authorized or the newly proposed research activities. Rather, Dr. Nowacek states in his application that two co-principal investigators under his National Science Foundation permit also are designated as co-investigators under Marine Mammal Protection Act Permit No. 774-1714-10, issued to the National Marine Fisheries Service's Southwest Fisheries Science

Center, and would be collecting the requested samples under that permit. Because the National Science Foundation issued the original permit, we assume that it was satisfied that Permit No. 774-1714-10 provided sufficient authority for Dr. Nowacek and his colleagues to conduct the proposed research activities. Still, it remains unclear whether Permit No. 774-1714-10 also provides authority for the new activities being proposed and, if not, whether a parallel amendment of that permit is being pursued.

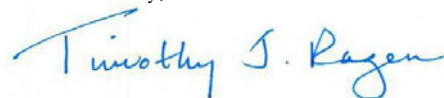
The simplest way to avoid possible confusion resulting from dual permitting agencies and systems is to require the same applicant or permit holder to apply for and possess the different permits. The Marine Mammal Commission reiterates its previous recommendation that the National Science Foundation adopt a general policy to require that the permit holder or the applicant seeking authorization under the Antarctic Conservation Act to conduct research on marine mammals in areas subject to that Act also be the same applicant or permit holder seeking authorization under the Marine Mammal Protection Act. If, for some reason, that is not possible, the Marine Mammal Commission recommends that the National Science Foundation and the National Marine Fisheries Service's permit division strengthen their coordination efforts to determine precisely which researchers are authorized (or requesting authority) to conduct what activities under what permit or permits as part of their review and make that information available as part of the public comment process.

Consistent with these recommendations, the Commission believes that the Southwest Fisheries Science Center, as the holder of Permit No. 774-1714-10, or alternatively the co-investigators authorized to conduct activities under that permit, should have applied for the permit under the Antarctic Conservation Act in the first instance and should be applying for the amendment now. At the very minimum, the National Science Foundation should, as part of the public review process of this permit modification, specify who will be collecting the specimen material, under what Marine Mammal Protection Act permit they will be operating, and what provision or provisions of that permit authorize them to engage in the proposed activities. That information should be made available to the Commission and others before a permit modification is issued.

With respect to this particular modification request, Dr. Nowacek requests "an additional 100 takes for close approaches to biopsy sample both humpback and minke whales (i.e., 100 takes per species)." It is unclear whether "takes" in this instance refers to the number of animals from which the permit holder proposes to obtain biopsy samples (i.e., 100 animals/samples per species), to the number of different animals that will be approached closely to obtain biopsy samples, or to the total number of times that any individual of each species will be approached in the course of obtaining biopsy samples. The Marine Mammal Commission recommends that the National Science Foundation consult the applicant to clarify whether the numbers specified in the modification request refer to the number of samples to be collected, the number of animals to be approached (perhaps multiple times each), or the total number of approaches that will be attempted. That information also should be made available to the Commission and others before a permit modification is issued and, thereafter, should be indicated clearly in the permit modification, if issued.

Please contact me if you or your staff has any questions concerning these recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

cc: Mr. P. Michael Payne