



# MARINE MAMMAL COMMISSION

8 January 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, MD 20910-3225

Re: Permit Application No. 14791  
(Douglas Nowacek, Ph.D.)

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 seeking authorization to take by harassment North Atlantic right whales during behavioral observations, photo-identification, and suction-cup tagging activities over a five-year period. Based on its review, the Commission offers the following recommendation and comments.

## RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service defer issuance of this permit and similar authorizations to take right whales until it has resolved the National Environmental Policy Act issues concerning research on this species and has prepared the necessary environmental analyses.

## RATIONALE

The applicant is requesting authorization to take by harassment annually up to 80 North Atlantic right whales (excluding mother/calf pairs) during passive acoustic recording, behavioral observations, photo-identification, attempts to successfully tag 40 individuals with D-tags or other multi-sensor devices using suction-cup tags, tracking, collection of sloughed skin and blowhole output, and incidental harassment. In addition, the applicant is requesting authorization to approach up to 90 right whales annually for behavioral observations, photo-identification, passive recordings, and incidental harassment. Skin samples would be sent to Saint Mary's University, Halifax, Nova Scotia, for genetic analyses, and exhalation products would be maintained at Duke University until a collaborator is found to analyze the samples. The purposes of the proposed research are to investigate how right whales use the water column while feeding versus traveling and to obtain additional data on the vocalization rates of individual whales to assess the effectiveness of passive acoustic monitoring. The proposed research would be conducted year-round over a five-year period in the western North Atlantic Ocean, including the Gulf of Maine, Cape Cod Bay, and coastal waters within 50 nautical miles of shore along the entire eastern seaboard.

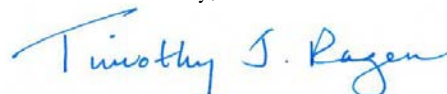
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In a number of recent letters, the Commission has recommended that the Service defer consideration of permit applications and amendment requests seeking authorization to take North Atlantic and North Pacific right whales until it (1) has completed the programmatic environmental impact statement on issuing permits authorizing research on these species announced in a 17 October 2005 *Federal Register* notice (70 Fed. Reg. 60285) or (2) has provided an adequate justification for deciding to comply with the requirements of the National Environmental Policy Act in some other way and has completed that alternative analysis. The Marine Mammal Commission again recommends that the National Marine Fisheries Service defer action on this and similar permit requests until the Service has resolved how best to comply with the National Environmental Policy Act and has prepared the necessary environmental analyses. As it has indicated before, the Commission believes that the Service needs to move cautiously and with a clear record of decision if it intends to deviate from its earlier determination that a programmatic environmental impact statement is needed. The Commission encourages the Service to resolve this issue as quickly as possible to enable important research on this species to proceed. Were it not for the lack of a well-founded analysis under the National Environmental Policy Act that considers the potential cumulative effects of research and other activities on right whales, the Commission likely would recommend that this permit application and others proposing to conduct activities related to the conservation of right whales be approved.

Upon resolution of the National Environmental Policy Act issues by the Service, the Commission will provide specific comments and recommendations on the application in question.

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

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director