

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

29 January 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: Permit Application No. 13927 (James Hain, 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 request with regard to the goals, policies, and requirements of the Marine Mammal Protection Act. The applicant requests authorization to take annually up to 34 North Atlantic right whales, 50 humpback whales, 50 fin whales, and various numbers of several other marine mammal species by harassment during aerial and vessel surveys over a five-year period (73 Fed. Reg. 75084).

RECOMMENDATIONS

The Marine Mammal Commission recommends that—

- if the National Marine Fisheries Service is planning to reverse its current policy regarding the completion of a programmatic environmental impact statement and the issuance of permits for research on right whales, it move cautiously and with a record of decision that provides clear and adequate justification for doing so.

With regard to the permit application under consideration, the Marine Mammal Commission recommends that the National Marine Fisheries Service—

- defer authorization to take right whales until it has resolved National Environmental Policy Act issues concerning research on this species;
- approve authorization for activities involving species other than right whales, provided that the researchers take steps to minimize disturbance of the subject animals by exercising caution when approaching animals, particularly mother/calf pairs, and halt an approach if there is evidence that a whale may be injured in an unintended way (that is, some research, such as tagging, may result in some types of anticipated and authorized injury), that mother/calf pairs may be separated for a prolonged period of time, or that a whale may exhibit a marked change in behavior, such as leaving a feeding or resting area; and
- ensure that researchers working under this permit and other permit-holders who might be carrying out research on the same species in the same areas coordinate their studies and, as possible, share data to avoid unnecessary duplication of research and disturbance of animals.

RATIONALE

The National Marine Fisheries Service published a notice in the *Federal Register* on 17 October 2005 (70 Fed. Reg. 60285) announcing its intent to prepare a programmatic environmental impact statement to analyze the effects of issuing permits authorizing research on right whales in the Atlantic and Pacific Oceans. In particular, the Service identified the need to evaluate the cumulative impacts of such research and “to assess the likely environmental effects of issuing permits under a range of alternatives characterized by different research methods, mitigation measures, and level of effort, including a range of sample sizes and temporal and geographic scopes of research.” Subsequent to publication of that notice, the Service’s Permit Office indicated that it would not be issuing additional permits authorizing research on right whales until the planned programmatic environmental impact statement had been completed.

The Service now appears to be reversing that decision by issuing permits authorizing research on right whales before completion of the programmatic environmental impact statement. The Commission understands that, until the programmatic statement is completed, the Service plans to prepare environmental assessments on the potential impacts of issuing individual permits. We do not see how the Service can adequately evaluate the cumulative effects of proposed research if it looks only at the impacts of individual studies in isolation. We also do not see how the Service can make informed decisions regarding potentially competing projects based on their relative importance or priority if the Service has not established a framework for evaluating their cumulative effects or how authorizing some projects might affect the ability to carry out others. If the Service decides to authorize this and other research activities on right whales without completing a programmatic environmental impact statement, it must provide a well-reasoned rationale for doing so.

Accordingly, the Marine Mammal Commission recommends that, if the National Marine Fisheries Service is planning to reverse its current policy regarding the completion of a programmatic environmental impact statement and the issuance of permits for research on right whales, it move cautiously and with a record of decision that provides clear and adequate justification for doing so. In particular, the record of decision should clearly document how the Service assessed the potential cumulative impacts of ongoing and planned research projects in combination with the other factors (i.e., entanglement in fishing gear, ship strikes) that are affecting right whales.

With regard to the specific permit application under consideration, the Marine Mammal Commission recommends that the Service defer authorization to take right whales until it has resolved the National Environmental Policy Act issues concerning research on this species. The Marine Mammal Commission further recommends that the Service approve authorization for activities involving species other than right whales, provided that the researchers take steps to minimize disturbance of the subject animals by exercising caution when approaching animals, particularly mother/calf pairs, and halt an approach if there is evidence that a whale may be injured in an unintended way (that is, some research, such as tagging, may result in some types of anticipated and authorized injury), that mother/calf pairs may be separated for a prolonged period of time, or that a whale may exhibit a marked change in behavior, such as leaving a feeding or resting area.

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Finally, the Marine Mammal Commission recommends that the Service ensure that researchers working under this permit and other permit-holders who might be carrying out research on the same species in the same areas coordinate their studies and, as possible, share data to avoid unnecessary duplication of research and disturbance of animals.

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 and comments.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director