



MARINE MAMMAL COMMISSION

6 August 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. 15511
(SeaWorld, LLC)

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. SeaWorld, LLC, is requesting authorization to import one male short-finned pilot whale, rescued by the Southern Caribbean Cetacean Network in Curacao, Netherlands Antilles, to SeaWorld California for the purpose of public display.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue a permit in accordance with section 104(c)(7) of the Act to authorize the retention of this pilot whale for purposes of public display although no taking or importation is being authorized.

RATIONALE

SeaWorld is requesting a permit to authorize the import of one short-finned pilot whale for purposes of public display. According to the *Federal Register* notice (75 Fed. Reg. 38457), however, SeaWorld already imported this animal on 4 January 2010 under the authority of sections 109(h) and 112(c) of the Act. Thus, there is no need to issue a permit authorizing the import of this animal. Similarly, the animal already has been taken (i.e., captured and removed from the wild) and transported to the facility where it will be housed, so issuing a permit to take this animal at this stage also is unnecessary. Rather than requesting authority to take or import the animal, it appears that the applicant actually is seeking a change in the authority under which the animal is being maintained at the facility from one based on section 109(h) of the Marine Mammal Protection Act to a permit issued under section 104 of the Act. When no additional taking or importing is involved, such a request does not fit well within the parameters of section 104(c)(2), the primary provision of the Act governing public display permits. However, the retention of an animal originally maintained in captivity for purposes of rescue and rehabilitation and now deemed to be non-releasable precisely is the situation contemplated under section 104(c)(7) of the Act.

Before issuing a public display permit pursuant to section 104(c)(7), there are four basic determinations that must be made: (1) that the animal is not releasable in accordance with guidance issued by the Service; (2) that the facility offers a program for education and conservation purposes

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that is based on professionally recognized standards of the public display community; (3) that the facility is licensed under the Animal Welfare Act and meets the requirements applicable to the care and maintenance of the species being requested; and (4) that the facility is open to the public on a regularly scheduled basis and that access is not limited or restricted other than by charging an admission fee. It appears that all four requirements are met in this instance. The Marine Mammal Commission therefore recommends that the Service issue a permit in accordance with section 104(c)(7) of the Act to authorize the retention of this pilot whale for purposes of public display although no taking or importation is being authorized.

Through issuance of such a permit, the applicant would acquire the rights set forth under section 104(c)(2)(B) and the responsibility to remain in compliance with the issuance criteria in accordance with section 104(c)(2)(D). It is not clear that these rights and responsibilities would be applicable if the animal were retained under the authority of section 109(h) or some alternative authorization from the Service, short of a permit. In addition, through permit issuance, any person that subsequently acquires the animal from SeaWorld would be subject to the rights and responsibilities set forth in section 104(c)(2)(C)—rights and responsibilities that would not necessarily accrue under any other type of authorization.

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 this recommendation.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

cc: Barbara Kohn, D.V.M.
Mr. Timothy J. Van Norman