



MARINE MAMMAL COMMISSION

17 December 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

Re: Permit Application No. 14450
(Southeast Fisheries Science Center, NMFS)

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 Commission's comments and recommendations follow.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service defer action on this permit application until the proposed research has been reviewed and approved by an Institutional Animal Care and Use Committee and the applicant has provided the assurance of compliance with these requirements. The Marine Mammal Commission further recommends that the National Marine Fisheries Service—

- move cautiously and with a record of decision that provides clear and adequate justification if the Service is planning to review or revise its decision to prepare a programmatic environmental impact statement on the issuance of permits for research on right whales in the Atlantic and Pacific Oceans (70 Fed. Reg. 60285). In particular, the Service should carefully document how it has assessed the potential cumulative effects of ongoing and planned research projects in combination with other factors (i.e., entanglement in fishing gear, ship strikes) that are affecting right whales; and
- defer authorization for the harassment of North Atlantic right whales in this permit, if issued, and similar authorizations to take right whales until it has resolved the National Environmental Policy Act issues concerning research on this species.

The Marine Mammal Commission recommends approval of the remainder of the permit upon appropriate resolution of these issues.

RATIONALE

The application pertains to stock assessment surveys in domestic and international waters of the Atlantic Ocean, Gulf of Mexico, and Caribbean Sea, conducted during the period from January 2010 through December 2014. Proposed activities include aerial and vessel-based line-transect sampling, acoustic sampling, behavioral observations, and vessel-based photo-identification and biopsy sampling. The applicant requests authorization to take by Level B harassment and skin and blubber biopsy sampling various numbers of all cetacean species that may occur in the study areas, including blue whales (20/10), fin whales (500/15), sei whales (15/10), humpback whales (1,000/300), sperm whales (4,000/300), and North Atlantic right whales (50/0). The applicant also requests authorization to import into the United States tissue samples collected in international waters and in other countries.

The Commission recognizes the value of the research conducted by the Service's scientists and strongly supports research that furthers our understanding of the status and trends of marine mammal stocks. However, the Service has reached the same conclusion as the Commission that § 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations apply to Service research activities. For that reason, it makes sense to defer action on this permit until an Institutional Animal Care and Use Committee has reviewed the application. In fact, the Service has indicated that, after 31 December 2009—less than two weeks away—it will no longer accept applications from within the agency that do not include assurance of compliance with these requirements. The Marine Mammal Commission therefore recommends that action on this application be deferred until the research has been reviewed and approved by an Institutional Animal Care and Use Committee and the applicant has provided the necessary assurance of compliance. Because the Service will begin enforcing this requirement in a matter of weeks, deferring action in this instance should not create a hardship for the applicant.

Regarding the applicant's request to conduct research involving North Atlantic right whales, the Marine Mammal Commission reiterates its recommendation (see enclosed letter of 22 October 2009 regarding application No. 14233 from Scott Kraus, Ph.D.) that the National Marine Fisheries Service move cautiously and with a record of decision that provides clear and adequate justification if it is planning to review or revise its decision to prepare a programmatic environmental impact statement on the issuance of permits for research on right whales in the Atlantic and Pacific Oceans (70 Fed. Reg. 60285). In particular, the Service should carefully document how it has assessed the potential cumulative effects of ongoing and planned research projects in combination with other factors (i.e., entanglement in fishing gear, ship strikes) that are affecting right whales. Further, the Marine Mammal Commission recommends that the National Marine Fisheries Service defer authorization for the harassment of North Atlantic right whales in this permit, if issued, and similar authorizations to take right whales until it has resolved the National Environmental Policy Act issues concerning research on this species. As noted in its previous letters on this topic, the Commission urges the Service to proceed expeditiously with resolution of this issue because, under current conditions, research necessary to support recovery efforts is being delayed.

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Upon appropriate resolution of these issues by the Service, the Marine Mammal Commission recommends that the permit be issued.

Please contact me if you have any questions concerning these comments and recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Enclosure

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