



MARINE MAMMAL COMMISSION

2 November 2009

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 29 September 2009 (74 Fed. Reg. 49894), the National Science Foundation requested comments on a permit modification request from George Watters, Ph.D., Southwest Fisheries Science Center, National Marine Fisheries Service, seeking authorization under the Antarctic Conservation Act of 1978 to expand currently authorized research activities on pinnipeds under Permit No. 2007-003.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Science Foundation—

- defer action on this request until the National Marine Fisheries Service demonstrates that the proposed research has been reviewed and approved by an Institutional Animal Care and Use Committee, as required under the Animal Welfare Act; and
- defer consideration of any other scientific permit amendment requests and applications submitted from the National Marine Fisheries Service that involve any invasive procedure or other activity that might harm or materially alter the behavior of the animals under study until that agency has established such a committee and that committee has found the proposed research to be consistent with Animal Welfare Act requirements.

RATIONALE

The Commission notes that the permit holder has obtained the necessary authorization for the planned activities under the Marine Mammal Protection Act (see the enclosed amended permit No. 774-1847-04, issued on 2 September 2009). Unfortunately, the National Marine Fisheries Service issued the permit contrary to the Commission's recommendation that the agency defer further action on the request until it had determined that the applicant was in compliance with § 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations. Those regulations require that certain types of research be reviewed and approved by an Institutional Animal Care and Use Committee (see the Commission's 31 July 2009 letter, enclosed). As stated in that letter, the Commission has sent numerous letters to the Service, including comments on the permit holder's original permit application (letter of 26 July 2006, copy enclosed), expressing its concern that the Service continues to issue permits to its Science Centers despite their failure to

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establish and utilize Institutional Animal Care and Use Committees, as required under the Animal Welfare Act and its implementing regulations. In light of the Service's continued non-compliance with those requirements, the Marine Mammal Commission recommends that the National Science Foundation defer further action on the request until the National Marine Fisheries Service demonstrates that the proposed research has been reviewed and approved by an Institutional Animal Care and Use Committee. Further, the Marine Mammal Commission recommends that the National Science Foundation defer consideration of any other scientific permit amendment requests and applications submitted by the National Marine Fisheries Service that involve any invasive procedure or other activity that might harm or materially alter the behavior of the animals under study until that agency has established such a committee and that committee has found the proposed research to be consistent with Animal Welfare Act requirements.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Enclosures

cc: Mr. P. Michael Payne
Barbara Kohn, D.V.M.