

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

2 April 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: Request for Amendment, Permit No. 774-1714
(Southwest Fisheries Science Center)

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the above-referenced request for a permit amendment with regard to the goals, policies, and requirements of the Marine Mammal Protection Act. The applicant is seeking amendment of his current permit to authorize an increase in the number of short-beaked and long-beaked common dolphins that may be harassed during vessel and aerial surveys and by biopsy-sampling. The Commission offers the following recommendations and comments.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service defer issuance of the requested permit amendment until (1) the permit-holder demonstrates that he is in compliance with section 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations requiring the establishment of an Institutional Animal Care and Use Committee and (2) the proposed research has been reviewed and approved by such a committee.

Upon resolution of this issue, the Marine Mammal Commission recommends that the National Marine Fisheries Service approve the requested amendment, provided that—

- the conditions currently contained in the permit remain in effect (e.g., small cetacean calves less than one year of age and females accompanying such calves not be biopsy-sampled); and
- the Service ensure that the take tables in permit applications, amendment requests, and issued authorizations (for both permits and amendments) clearly indicate the number of animals that may be taken, the ways in which they may be taken, and the number of times that individual animals may be taken in all of those ways.

RATIONALE

Permit No. 774-1714 authorizes the taking by harassment of various numbers of 53 species of cetaceans and 7 species of pinnipeds in the course of (1) estimating abundance, collecting behavioral data, recording vocalizations, and photography; (2) collecting biopsy samples; and (3)

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conducting tagging studies on selected species. The permit also authorizes the permit-holder to take, salvage, and import, export, or re-export marine mammal parts, specimens, and biological samples and import, export, or re-export salvaged parts or specimens and biological samples collected by other researchers under separate authorizations. The research is being carried out year-round over a five-year period in U.S. waters off California, Oregon, Washington, Hawaii, and Alaska and in international waters (primarily the Pacific and Southern Oceans). The permit is valid through 30 June 2009, and the permit-holder intends to request an extension of the permit through 30 June 2010.

The permit-holder is requesting that the permit be amended to increase the number of short-beaked and long-beaked common dolphins that may be harassed during vessel and aerial surveys and biopsy-sampling. The requested increase will enable the permit-holder to assess these species' relative reproductive rates within the California Current ecosystem. Up to 60,000 dolphins of each species would be harassed annually during aerial surveys, and up to 10,000 dolphins of each species would be approached by vessels for photo-identification. Up to 1,500 animals of each species would be biopsy-sampled. The permit-holder also is requesting authorization to harass up to 40,000 individuals of each species incidental to the planned activities. The proposed research would be conducted off California and Baja California within 100 nmi of shore and is scheduled to begin on 1 September 2009 and end on 30 November 2009. The permit-holder has applied for permits from the government of Mexico to conduct research activities in the territorial waters of Mexico.

As noted in several previous letters to the Service, including comments on the permit-holder's original permit application (letter of 26 July 2006), the Commission is concerned that the Service continues to issue permits to its Science Centers despite their failure to establish and utilize Institutional Animal Care and Use Committees as required under the Animal Welfare Act. The Marine Mammal Commission reiterates its recommendation that the Service's Science Centers be brought into compliance with the applicable Animal Welfare Act regulations. Further, the Marine Mammal Commission recommends that the Service defer approval of this and other scientific permit applications and amendment requests submitted from within the agency that involve any invasive procedure or other activity that might harm or materially alter the behavior of the animals under study until such committees have been established and have reviewed and approved the proposed research, consistent with Animal Welfare Act requirements.

Upon resolution of this issue, the Marine Mammal Commission recommends that the permit amendment be issued, provided that the conditions currently included in the permit remain in effect. For example, special condition A.3 of the permit prohibits the biopsy-sampling of small cetacean calves less than one year of age and females accompanying such calves.

The Commission also notes that the tables contained in the amendment request and the permit itself refer to the number of "takes" requested and authorized rather than to the number of animals for which authorization is being requested or has been issued. The Service's new on-line application system defines "Expected Take" as "the number of animals you expect to take or import, annually." The number of takes being requested or authorized and the number of animals requested or authorized to be taken may differ, depending on the research being conducted. The

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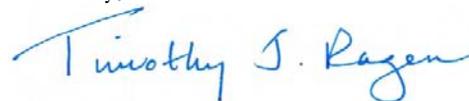
Marine Mammal Commission recommends that, for purposes of clarity, the Service ensure that the take tables in permit applications, amendment requests, and authorizations (for both permits and amendments) clearly indicate the number of animals that may be taken, the ways in which they may be taken, and the number of times that individual animals may be taken in all of those ways. In reviewing this permit amendment request, the Commission has interpreted the requested increase in numbers to apply to the number of animals for which taking authorization is being sought and not to the number of takings of those animals. If necessary, the Service should confirm this with the applicant, and steps should be taken to ascertain or estimate the number of times that any individuals might be taken.

On a related matter, special condition A.3 of the current permit, as amended, states that “all age and sex classes of animals [non-endangered cetaceans] in Table 3 may be approached for surveys and photo-id. Only adults, juveniles, calves greater than 1 year old and females with calves greater than 1 year old may be biopsy sampled (except killer whales)...” It is unclear what the parenthetical “except killer whales” refers to. The Service should revise the permit, if amended, to clarify this. In addition, special condition A.3 states that “[n]o [non-endangered cetacean] calves will be tagged....” It does not, however, indicate whether females accompanying such calves can be tagged. The Commission understands from the Service that, based on its interpretation of the environmental assessment for the Structures of Population, Levels of Abundance and Status of Humpback Whales (SPLASH) project, non-endangered cetacean females accompanying calves of any age can be tagged. This also should be made clear in the permit, if amended.

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