



MARINE MAMMAL COMMISSION

31 July 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 of Permit No. 774-1847-03
(Southwest Fisheries Science Center,
National Marine Fisheries Service)

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the above-referenced permit amendment request with regard to the goals, policies, and requirements of the Marine Mammal Protection Act.

RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- take immediate action to use existing Institutional Animal Care and Use Committees or to establish additional committees to bring its Science Centers into compliance with applicable requirements of the Animal Welfare Act,
Or
- defer further action on the requested permit amendment until the permit holder demonstrates (1) that it is in compliance with section 2.37 of the Animal and Plant Health Inspection Service's Animal Welfare Act regulations requiring the establishment and use of Institutional Animal Care and Use Committees and (2) that the proposed research has been reviewed and approved by such a committee; and
- defer consideration of any 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 a committee has been established and has found the proposed research to be consistent with Animal Welfare Act requirements.

RATIONALE

Permit No. 774-1847-03 authorizes the permit holder to take annually by harassment up to 710 Antarctic fur seals, 20 leopard seals, and 180 southern elephant seals to study the life history, abundance, and distribution of pinnipeds that haul out at Cape Shirreff on the South Shetland

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Islands, Antarctica. The permit also authorizes the permit holder to capture, measure, weigh, mark, and tag the animals and to take blood samples, collect vibrissae, and attach time-depth recorders, VHF transmitters, and platform terminal transmitters. Subsets of the seals are selected for the collection of other samples (intestinal contents, milk, blubber, muscle, and tooth) and inclusion in a study of energetics using doubly-labeled water. The permit authorizes the accidental death of up to four southern elephant seals (two adult females and two juveniles), eight Antarctic fur seals (three adult females and five pups), and one adult or juvenile leopard seal each year during the activities. The duration of the permit is five years (through 30 September 2011), and the activities covered are part of a long-term ecosystem monitoring program established in 1986.

The permit holder is requesting that the permit be amended to authorize taking by harassment of Weddell seals to study the species' movements, site fidelity, and demographics. Up to 60 Weddell seals annually would be captured, instrumented, and sampled (blood, vibrissae, muscle, blubber, and milk). The Center is requesting authorization for the accidental death of up to four Weddell seals (two adults and two juveniles) annually. The Center also is requesting authorization to attach microprocessors to flipper tags of fur seals, increase the number of tissue samples that can be collected from fur seals, increase the number of leopard seals and fur seals that can be tagged (for the purpose of retagging), and deploy an unmanned aircraft over the seals for aerial photography.

Both the research currently allowed under this permit and that covered under the requested amendment include invasive procedures or activities that might harm or materially alter the behavior of the animals under study. In numerous letters to the Service, including comments on the permit holder's original permit application (letter of 26 July 2006), the Commission has expressed concern that the Service continues to ignore the provisions of the Animal Welfare Act and its implementing regulations by issuing permits to its Science Centers despite their failure to establish and utilize Institutional Animal Care and Use Committees. In this regard, the Service's longstanding flouting of these requirements is particularly egregious because scientists from virtually every other organization have been meeting these requirements for years, sending the message that the Service is applying a double standard with regard to its review of applications from inside and outside the agency. For more than a year, the Service has been indicating that it is in the process of establishing such committees, but, as of yet, it has failed to do so. The Commission can only conclude that the Service does not take seriously its responsibility to comply with the requirements of the Animal Welfare Act and its implementing regulations, first by making spurious claims that these requirements somehow might not apply to the agency's research activities, then by taking an unnecessarily long time to resolve what was a very straightforward legal question about the applicability of the Animal Welfare Act requirements, and now by taking an inordinately long time to establish the committees it admits are required. This is an unacceptable position for any federal agency, but especially for the agency responsible for administering the permit program. The Marine Mammal Commission reiterates its recommendation that the Service take immediate action to establish Institutional Animal Care and Use Committees to bring its Science Centers into compliance with those requirements.

The Commission has been advised that, although the establishment of three planned regional Institutional Animal Care and Use Committees is still months away, the Service has

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established one such committee on an interim basis to review research activities related to its Marine Mammal Health and Stranding Response Program. We understand that the principal investigator for the permit under which that program operates pushed the Service to establish the interim committee because she recognized the considerable value that review by an Institutional Animal Care and Use Committee would have in refining the proposed research and promoting humane treatment of the subject animals. The Commission further understands that, once a decision was made to establish the interim committee, it was created quite quickly (i.e., in less than a month). Although the interim committee was initially intended to have a limited scope and to be of short duration, the Commission sees no reason why the committee's term could not be extended to enable it to review the research being proposed by this applicant and that proposed in other recent applications and amendment requests submitted by Service scientists and for which the Commission has recommended review by an Institutional Animal Care and Use Committee prior to permit issuance or amendment. Alternatively, the Service could create other interim committees to conduct such reviews. It already has demonstrated that it has the capability to establish and convene a committee expeditiously when there is sufficient motivation to do so.

Another stopgap alternative worth considering that would enable the Service to meet its responsibilities under the Animal Welfare Act on an interim basis is to make use of the Institutional Animal Care and Use Committee established by the National Ocean Service last year. At least for the activities being proposed in the current amendment request, there should be sufficient time to secure review of the proposed research by one of these Institutional Animal Care and Use Committees, incorporate any changes to the research plan prompted by that review, and have the Permits Office take action on the requested amendment before the next field season begins. The Marine Mammal Commission therefore recommends that the Permits Office defer further action on this amendment request until an Institutional Animal Care and Use Committee has reviewed the proposed research activities and found them to be consistent with Animal Welfare Act requirements. Furthermore, the Marine Mammal Commission recommends that the Permit Office defer consideration of any other scientific permit application or amendment request submitted from within the agency that involves any invasive procedure or other activity that might harm or materially alter the behavior of the animals under study until such a committee has reviewed the proposed research activities and has found them to be consistent with Animal Welfare Act requirements.

If the Service decides to approve the requested permit amendment contrary to the Commission's recommendations, we request that the Service provide the Commission with (1) a detailed written explanation as to why it was unable to use the Institutional Animal Care and Use Committee that it has created on an interim basis, establish another interim committee, or use another committee already established within the National Oceanic and Atmospheric Administration to review the proposed research, (2) a report on the status of its actions to establish Institutional Animal Care and Use Committees, including the projected date or dates by which such committees will be in place and are expected to have completed a retroactive review of the research activities currently authorized to be conducted by the Service, or for which authorization is currently pending, and for which review by an Institutional Animal Care and Use Committee is required but

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has not been conducted, and (3) a full explanation as to why action on this amendment request was not deferred until an Institutional Animal Care and Use Committee had reviewed and approved the proposed research.

The Service also should require that the permit holder clarify the following issues:

- The application states that researchers will use a “teletamine HCL/zolazepam HCL mixture” to sedate adult female Weddell seals. However, in its response to the Permit Office’s questions, the permit holder states that adult Weddell seals will be sedated with “ketamine hydrochloride and Valium (diazepam) or midazolam.” This discrepancy should be resolved.
- The third page of the permit holder’s response to the Permit Office indicates that procedures involving adults will be identical to those used on juveniles (i.e., blood sampling, weighing, measuring, and collection of vibrissae). However, on the fourth page of the response, it states that there are “no plans to sample blood or pull vibrissae from juvenile Weddell seals.” This apparent discrepancy should be resolved.
- The permit holder should identify the steps that would be taken to identify pups of lactating females that are targeted for capture before attempting to capture the female and to monitor animals post-release to assess the effects of the research procedures on the subject animals and to ensure that mothers and pups reunite.

These points likely would have been identified during review by an Institutional Animal Care and Use Committee, and they highlight the need for and value of such a review.

Please contact me if you have questions concerning the Commission’s recommendations.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

cc: Barbara Kohn, D.V.M.
Nadene G. Kennedy