

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

13 April 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 13 March 2009 (74 Fed. Reg. 10968), your office requested comments on a permit modification request from Cindy Lee Van Dover, seeking authorization under the Antarctic Conservation Act of 1978 to export to Antarctica vertebrae from a North Atlantic right whale for scientific research purposes and to re-import the bones into the United States upon completion of the field study.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Science Foundation defer issuing the requested authorization pending additional information from the applicant, including (1) a more detailed description of the purpose and objectives of the research, including why she plans to use wood and North Atlantic right whale vertebrae—neither indigenous to Antarctica—for the proposed project; (2) an analysis of the potential for any disease or health risk associated with importing or exporting non-indigenous species to or from Antarctica; and (3) the location and depths at which the substrate (wood and whale vertebrae) would be placed.

Upon resolution of these issues, the Marine Mammal Commission recommends that the National Science Foundation—

- consider issuance of the requested authorization only after it has confirmed with the National Marine Fisheries Service that the permit-holder has obtained all necessary authorizations for the planned activities under the Marine Mammal Protection Act and the Endangered Species Act;
- consult with the National Marine Fisheries Service to determine whether having different permit-holders under the applicable statutes creates operational or legal problems and, if so, adopt appropriate policies to ensure consistency in applicants across the various permits; and
- advise the permit-holder of the need to obtain an authorization under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to export or import right whale bones from or to the United States and suggest that she consult with the Fish and Wildlife Service concerning the applicable requirements.

RATIONALE

Based on the information available, the Commission is not clear why the applicant is proposing to use whale vertebrae from a North Atlantic right whale as a substrate rather than similar bones from other whale species that occur naturally in Antarctica. We have similar concerns about

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the proposed use of pine or other organic materials that do not naturally occur in Antarctica as a substrate, which also present some risk of introducing diseases or presenting other health risks to local biota. This being the case, the Marine Mammal Commission recommends that the National Science Foundation defer issuing the requested permit until the applicant has explained why these particular substrates, rather than indigenous species, are needed, assessed the disease and health risks associated with importing and exporting non-indigenous species to or from Antarctica, and described more precisely where and how the substrates would be deployed.

To our knowledge, Ms. Van Dover does not possess—and has not applied for—a research permit or other authorization for the proposed activities under either the Marine Mammal Protection Act or the Endangered Species Act. It may be that these activities are covered under permits issued to another researcher or research institution. If that is the case, it is not clear why the holder of the other permits is not applying for the permit under the Antarctic Conservation Act. If Ms. Van Dover's planned activities are not covered by existing Marine Mammal Protection Act and Endangered Species Act permits, the National Science Foundation should advise her that such authorizations are needed. If she will be working under someone else's permits, this should be made clear, and the National Marine Fisheries Service should confirm whether this is appropriate. The Marine Mammal Commission recommends that the National Science Foundation refrain from issuing the requested permit modification until it has confirmed with the National Marine Fisheries Service that the permit-holder has obtained all necessary authorizations for the planned activities under the Marine Mammal Protection Act and the Endangered Species Act.

More generally, the responsible agencies (i.e., the National Science Foundation and the National Marine Fisheries Service) should determine whether allowing different permit-holders to obtain separate authorizations for the same activities under the Antarctic Conservation Act and the Marine Mammal Protection Act or Endangered Species Act creates operational or legal problems. If so, the Marine Mammal Commission recommends that the agencies adopt appropriate policies to ensure consistency in applicants across the various permits. The Commission would appreciate being informed of the agencies' determination and potential actions on this point.

In addition, it appears that a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora will be required for the proposed export and import of right whale bones. The Marine Mammal Commission therefore recommends that the National Science Foundation advise the permit-holder to consult with the Fish and Wildlife Service concerning the applicable permitting requirements.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Cc: Mr. P. Michael Payne
Mr. Timothy J. Van Norman