

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

29 May 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. 1000-1617  
(Whitlow W. L. Au, Ph.D.)

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. The applicant is seeking amendment of his current permit to authorize (1) an increase in the numbers of individuals of nine species of cetaceans that may be suction-cup tagged to collect sufficient data to address the originally stated research objectives and (2) the harassment of 18 non-threatened, non-endangered species of cetaceans while conducting acoustic playback studies to investigate the effects of noise on the behavior of cetaceans around Hawaii and the effects of low-level sounds that might elicit mild alert responses. The amendment would be valid until the current permit expires on 15 November 2010. The Marine Mammal Commission offers the following recommendations and comments.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service issue the requested permit amendment, provided that the conditions contained in the current permit remain in effect (i.e., that tagging not be conducted on calves or females accompanied by calves less than six months of age, as estimated on the basis of their size) and that the Service—

- require that the investigator stop an activity if (1) an animal exhibits a strong adverse reaction to tagging activities or (2) observations indicate that the proposed playback activities may lead to serious injury or mortality or have resulted in adverse behavioral reactions (as defined in Southall et al. 2007) or in the separation of mothers and calves for longer than 10 minutes;
- consult with the applicant to identify steps to be taken to monitor any animal that appears to become disoriented or injured during the playback experiments; and
- require that an activity be suspended, pending review and authorization to proceed, if it appears that an animal may have been injured as a result of an activity authorized under the permit.

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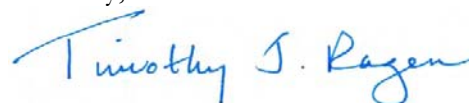
## **RATIONALE**

Condition A.2. of the existing permit provides that “[a]ll age and sex classes may be approached for observational, photo-identification, and acoustic recording studies. For biopsy and tagging studies, all age and sex classes may be tagged, except calves less than six months old or cetacean females attending such calves.” The amendment request states that attempts to tag an individual animal will be discontinued for the day if the animal demonstrates a strong negative response to tagging. The amendment request further states that during playback studies, behaviors will be classified according to the behavioral disturbance scale described by Southall et al. (2007) (i.e., if behavioral responses of animals within a group approach a response score of 7, playbacks will be attenuated by 20 dB, and if the behavior continues for more than 10 minutes after attenuation of the sound source (for example, if a calf under one year of age is separated from its mother for more than 10 minutes), playbacks with that pair or group of animals shall cease entirely for that day. The Marine Mammal Commission recommends that these precautionary measures be retained and included as conditions in the amended permit. The Marine Mammal Commission further recommends that the Service consult with the applicant to identify steps to be taken to monitor any animal that appears to become disoriented or injured during the playback experiments and require that an activity be suspended, pending review and authorization to proceed, if it appears that an animal may have been injured as a result of an activity authorized under the permit.

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,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a long horizontal stroke at the beginning.

Timothy J. Ragen, Ph.D.  
Executive Director

## Literature Cited

Southall, B. L., A. E. Bowles, W. T. Ellison, J. J. Finneran, R. L. Gentry, C. R. Greene, Jr., D. Kastak, D. R. Ketten, J. H. Miller, P. E. Nachtigall, W. J. Richardson, J. A. Thomas, and P. L. Tyack. 2007. Marine mammal noise exposure criteria: initial scientific recommendations. *Aquatic Mammals* 33:411–521.