



ATTORNEYS AT LAW

1666 K Street, NW  
Suite 500  
Washington, DC 20006  
T 202.887.1400  
F 202.466.3215

George J. Mannina, Jr.  
D 202.887.1491  
gmannina@nossaman.com

Refer To File #: 334120-0002

September 28, 2012

Kristy Beard, Fishery Biologist  
National Marine Fisheries Service  
Office of Protected Resources  
Permits and Conservation Division, F/PR1  
1315 East-West Highway, Room 13730  
Silver Spring, MD 20910

RE: File No. 17324

Dear Kristy:

Thank you for your email enclosing questions from the Marine Mammal Commission (“Commission”). Your email indicates the Commission has advised the National Marine Fisheries Service (“NMFS”) that “[t]hey need the answers before they can complete their review of the application and provide us with their recommendation letter....”

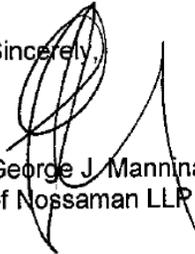
We are perplexed by this statement because several of the Commission’s questions have no legal relevance to the standards by which a permit application is judged and are beyond the legal authority of the Commission. For example, there is no statutory or regulatory requirement related to whether the Georgia Aquarium plans to continue research on beluga whales in the Sea of Okhotsk. Similarly, the question related to the disposition of the whales by their Russian owners if the permit application is denied has no basis in statute or regulation as a legal standard applicable to the pending permit application.

Further, the structure of the questions suggests that at least some of the questions may not be from the Commission but submitted by someone else. For example, the first question notes the expiration of the CITES permit and then states “I assume they are aware” the CITES permit will need to be current. Use of the word “I” does not sound like a Commission-generated question.

If the Commission intends to provide a recommendation regarding the Georgia Aquarium permit application, the Commission should confine itself to the applicable and appropriate legal standards. Failure to do so calls into question the legal status and relevancy of any comments the Commission may provide.

Notwithstanding the fact that a number of the Commission's questions are legally irrelevant and exceed the scope of the Commission's authority, we have provided answers in the attached document.

Sincerely,



George J. Mannina, Jr.  
of Nossaman LLP

GJM/jm  
Enclosure

**RESPONSE TO QUESTIONS FROM THE MARINE MAMMAL COMMISSION  
REGARDING FILE NO. 17324**

1. The CITES authorizations will expire soon, I assume they are aware they would have to obtain those authorizations again if they expire before the export, correct?

**Response.** The Georgia Aquarium is aware of the legal requirements associated with importing animals.

2. Would the whales have shade when traveling on the trucks from UMMRS to Anapa Airport or would they be in the direct sun? Would they be in direct sun when transported by vehicle when in the US?

**Response:** Any environmental conditions that might adversely affect the whales during transportation will be mitigated. Protection from sun is certainly one of them.

3. If reproduction has been impossible by the housing management, why are they checking multiple times that the females are not pregnant? What method are they using to determine if a female is pregnant? Were females of reproductive age kept with males at UMMRS?

**Response:** None of the beluga subject to the permit application is pregnant or likely to become so. The only reason for rechecking regarding pregnancy is to meet the U.S. requirement that imported animals not be pregnant at the time of importation. If it is satisfactory to NMFS, the Georgia Aquarium would be pleased to provide that certification immediately and to deem that part of the statutory requirement complied with effective as of the date of that certification.

4. Why can't the GAI-owned nylon slings be used at the beginning rather than changing slings at Liege Airport?

**Response:** The transportation equipment being utilized by the Russian transportation team is not compatible with the GAI equipment.

5. How many GAI staff/ reps will be present from UMMRS to Belgium? Are they part of the four attendants per flight or are those just the UMMRS vet/ husbandry staff?

**Response:** The number of GAI personnel in Russia for the whale transportation has yet to be determined. Regardless of ratio of U.S. to Russian animal care experts, the appropriate qualification/experience levels will be met in accordance with IATA, AZA, and AMMPA regulations/guidelines.

6. Were the whales kept with other whales not to be imported into the US while in Russia? How long have the whales been quarantined at UMMRS?

**Response:** The whales that have been selected for potential importation to the U.S. have not been kept with additional whales. The permit application already provides an answer as to how long the whales have lived/been quarantined at UMMRS: since 2006, 2010, and 2011 respectively.

7. What disease/pathogen testing occurred or will occur prior to the import? How long in advance of the import would those tests occur?

**Response:** All standardized tests currently required to provide a health certificate will be completed.

8. The application states that if the whales are not imported, they likely would be sold to the Chinese. Is that for public display purposes? They would not be killed for their meat, correct?

**Response:** The whales are currently owned by a Russian entity. If the permit application submitted by the Georgia Aquarium is denied, the 18 beluga whales will continue to be owned by that Russian entity. That entity will decide the disposition of the animals it owns.

9. Would GA Aquarium and other facilities continue funding research in the Sakhalin-Amur and Shantar regions beyond the 2012 field season?

**Response:** The Georgia Aquarium is committed to a beluga whale research program. We have agreed to fund continuing research in Alaska and in Russia.

**Questions on supplemental information:**

10. It appears that the Service previously inquired regarding the mitigation measures to be used when transferring the whales from one container to another (question 2a of the supplemental info). However, the response provided merely stated that standard practices would be used and procedures recommended by IATA, AZA, and AMMPA would account for such risks. Please provide a list of the mitigation measures to be implemented when transferring whales from one container to another, as those measures are still unclear.

**Response:** As stated in the permit application, appropriate practices will be followed as recommended by IATA, AZA, and AMMPA. Please refer to those standards. The whales will be placed in custom fitted stretchers and will be lifted utilizing appropriate hoisting equipment. During this time, environmental conditions will be assessed and addressed as necessary.

11. In addition, question 2b of the same supplemental information document requested further information about transferring animals expeditiously. The response cited standard practices and protocols by IATA, AZA, and AMMPA again but did not specify what those protocols entail or more importantly what “expeditiously” means. Please provide information regarding how long animals would be held at various stops during their journey from Russia to the multiple aquaria in the U.S.

**Response:** As to what the cited protocols require, please refer to the documents themselves. For example, the IATA protocols can be found with a search of IATA's website or manual. Regarding the meaning of "expeditiously," the transport will be conducted as quickly as possible. It is not possible to give exact, to the minute, time estimates.