

of human erythrocytes and its interaction with sugars and inhibitory molecules. *Application accepted by Commissioner of Customs*: September 18, 1996.

Frank W. Creel,  
Director, Statutory Import Programs Staff.  
[FR Doc. 96-26647 Filed 10-16-96; 8:45 am]  
BILLING CODE 3510-DS-P

## National Institute of Standards and Technology

[Docket No. 960909249-6249-01]

RIN 0693-xx23

### National Voluntary Conformity Assessment System Evaluation (NVCASE) Program

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice; request for public comment.

**SUMMARY:** This is to advise the public that the National Institute of Standards and Technology (NIST) received a letter dated July 24, 1996 from The American Society of Mechanical Engineers (ASME) requesting the development of a new program under the National Voluntary Conformity Assessment System Evaluation (NVCASE) Program to evaluate and recognize that organization as an accreditor of product certification bodies. The goal is to have pressure equipment tested and certified in the United States and have the results accepted in European Union (EU) member states on an equal basis as if performed in those countries under Council Directive 87/404/EEC with 90/488/EEC amendment.

**DATES:** Comments on this request must be received by January 2, 1997.

**ADDRESSES:** Comments should be submitted in writing to Robert L. Gladhill, NVCASE Program Manager, NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by fax at 301-963-2871, or E-mail robert.gladhill@nist.gov.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Gladhill, NVCASE Program Manager, at NIST, Bldg. 820, Room 282, Gaithersburg, MD 20899, by telephone at 301-975-4273 by fax at 301-963-2871 or by E-mail at robert.gladhill@nist.gov.

**SUPPLEMENTARY INFORMATION:** The NVCASE procedures at 15 CFR Part 286 require NIST to seek public consultation when it receives such requests. This program involves a collection of information subject to the Paperwork Reduction Act. This collection is

approved by the Office of Management and Budget under Control No. 0693-0019.

The Text of the Request follows:

July 24, 1996.

Mr. Robert L. Gladhill,  
Program Manager, NVCASE Program,  
NIST,  
Bldg. 820, Room 282,  
Gaithersburg, MD 20899.

Dear Mr. Gladhill: The American Society of Mechanical Engineers (ASME) is seeking recognition under NVCASE for our conformity assessment program for pressure equipment.

Since 1916, ASME has conducted conformity assessment programs for pressure equipment constructed in accordance with the ASME Boiler and Pressure Vessel Code. The Code provides rules for materials, design, fabrication, inspection, testing, quality control, certification, and marking of pressure equipment. Accredited manufacturers are authorized to use one or more of ASME's proprietary marks. Twenty-two marks are registered in the US and about the world.

In accordance with a 1972 Consent Decree with the United States government, ASME administers its accreditation programs uniformly about the world. There are more than 4000 accredited manufacturers in 55 countries. The ASME mark is required by law in most US States and all Canadian Provinces, and is used in 80 countries.

The following is the information you indicated was necessary for evaluation of our request:

**Foreign Requirements:** The corresponding foreign requirements are the European Union's directives for pressure equipment, specifically:

- Council Directive on the harmonization of the laws of the Member States relating to simple pressure vessels (87/404/EEC with 90/488/EEC amendment).
- Council Directive on the approximation of the laws of the Member States concerning pressure equipment (second reading and adoption scheduled for June 1996) ASME is participating in discussions regarding a mutual recognition agreement.

**Industrial Sector:** The industrial sector includes manufacturers of pressure equipment, including boilers, pressure vessels, piping, pressure relief devices, and materials. Manufacturers of machinery that incorporate these vessels are also affected.

The ASME accreditation program is utilized by the following US federal agencies:

- Department of Defense
- Department of Energy
- Department of Transportation
  - Coast Guard
  - Research and Special Programs Administration
- General Services Administration
- National Aeronautics and Space Administration
- Nuclear Regulatory Commission
- Occupational Safety and Health Administration

**Program Area:** The program includes both product and quality system certification.

**Level of Recognition:** ASME seeks recognition of its conformity assessment programs.

**Recommended Criteria, Technical Requirements:** The basic criteria for the program are the ASME Boiler and Pressure Vessel Code and ISO 9001. The corresponding European Union requirements are their Simple Pressure Vessel Directive and the Pressure Equipment Directive noted above.

**Rationale:** Currently, simple pressure vessels entering the EU must be CE marked. By mid 1997, there will be a similar requirement for pressure equipment. Authorization to affix the CE mark requires acceptance by an organization (notified body) which an EU Member State has appointed to carry out the conformity assessment activities. A notified body may subcontract certain technical aspects to a US organization, however, it may not subcontract initial assessment nor acceptance/approval.

Recognition of ASME as a competent technical body in the area of pressure equipment and conformity assessment would allow for mutual recognition agreements that would be of benefit to ASME Certificate Holders and companies that incorporate vessels into machinery. There are currently 3000 accredited companies in the US and 1100 in other countries.

Please let us know if any additional information is required at this time. We would also be willing to meet with you to discuss the process.

Sincerely,

David A. Wizda,  
Director, Conformity Assessment.

Interested parties should respond in writing to the above address. All comments submitted will become part of the public record and will be available for inspection and copying at the U.S. Department of Commerce Central Records and Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th and Constitution Avenue, Washington, DC 20230.

Dated: October 10, 1996.

Samuel Kramer,

Associate Director.

[FR Doc. 96-26643 Filed 10-16-96; 8:45 am]

BILLING CODE 3510-13-M

## National Oceanic and Atmospheric Administration

[I.D. 100896B]

### Small Takes of Marine Mammals Incidental to Specified Activities; U.S. Coast Guard

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of receipt of application for a small take exemption; request for information.

**SUMMARY:** Under the Marine Mammal Protection Act (MMPA), NMFS has received a request from the U.S. Coast Guard (USCG) for a small take of certain marine mammal species incidental to USCG vessel and aircraft operations off the U.S. Atlantic shoreline over the next 5 years.

**DATES:** Comments and information must be received no later than November 18, 1996.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-2337. A copy of the application and biological opinion may be obtained by writing to this address or by telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, NMFS (301) 713-2055.

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing), within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking.

**Summary of Request**

On June 2, 1995, NMFS received an application for a small take exemption under section 101(a)(5)(A) of the MMPA from the USCG in order to allow a small take of certain marine mammal species incidental to USCG vessel and aircraft operations off the U.S. Atlantic shoreline over the next 5 years. This application was in response to an order dated May 21, 1995 in *Strahan v. Linnon* wherein the presiding District Court judge ordered the USCG to apply by May 31, 1995, under section

101(a)(5)(A) of the MMPA, for a small take of northern right whales (*Eubalaena glacialis*). The application requested the following marine mammal species, in addition to the northern right whale: Blue whale (*Balaenoptera musculus*), fin whale (*B. physalus*), sei whale (*B. borealis*), humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*).

Specific activities covered in the application are the operation of USCG vessel and aircraft activities in the North Atlantic, including responses to marine pollution events, port safety and security issues, law enforcement efforts, search and rescue missions, vessel traffic control, and maintenance of aids to navigation.

Before processing this application, NMFS determined that it would be necessary to first complete consultation under section 7 of the Endangered Species Act (ESA). The USCG submitted a final ESA Biological Assessment for the U.S. Atlantic Coast on August 3, 1995, and NMFS issued a Biological Opinion on September 15, 1995. As a result of an October 9, 1995, humpback whale strike in the Gulf of Maine, the USCG requested reinitiation of consultation on February 22, 1996. That process was concluded on July 22, 1996. During the time period for consultation, processing the USCG application for a small take authorization was suspended.

The finding of the July 22, 1996, section 7 consultation was that continued vessel and aircraft operations by the USCG are likely to jeopardize the continued existence of northern right whales. However, NMFS also provided the USCG with a reasonable and prudent alternative, which, if implemented fully and in a timely manner by the USCG, significantly reduces the USCG's potential to cause injury or mortality to a right whale and thereby avoids the likelihood of jeopardizing the continued existence of right whales. This reasonable and prudent alternative is described in the July 22, 1996 biological opinion which is available upon request (see **ADDRESSES**).

**Finding**

Under section 101(a)(5)(A) of the MMPA, authorization to harass, injure or kill marine mammals incidental to specified activities may be granted for periods up to 5 years if NMFS finds, after notice and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. Negligible

impact is the impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. In 1995, NMFS estimated that the potential biological removal (PBR) level for the Western North Atlantic right whale was 0.4 whales. PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population.

The average reported mortality and serious injury to northern right whales due to ship strikes was one whale per year during 1990-94 (Blaylock *et al.* 1995). The USCG reportedly was responsible for one strike in 1991 and another in 1993. Therefore, because NMFS has determined that the loss of even a single northern right whale is significant (i.e., greater than PBR), a negligible impact finding under section 101(a)(5)(A) cannot be made for ship strikes of northern right whales by the USCG. For that reason, the USCG's June 2, 1995, application for a small take authorization for northern right whales was denied by letter on July 31, 1996. The requested authorization for the additional marine mammal species incidental to USCG operations was not addressed at that time.

*Strahan v. Linnon* and *Strahan v. Cox*

In these two cases, the presiding District Court judge expressed concern with NMFS' actions to date on the small take application and other marine mammal authorizations. Therefore, NMFS is announcing the receipt of the USCG application in order to crystallize the issues efficiently and formally in the public forum.

**Issues**

NMFS has identified the following issues that, in addition to the requirements of section 101(a)(5)(A) of the MMPA, must be addressed prior to publication of a proposed rule. These issues are:

(1) While an authorization for the serious injury or mortality of northern right whales cannot be issued for reasons stated above, should NMFS issue an authorization for the harassment or non-serious injury of northern right whales by USCG activities.

(2) Should NMFS publish a proposed rule to authorize the incidental take (including serious injury and mortality) of marine mammal species other than right whales, including marine mammal

species that are unlikely to be struck by USCG vessels (harassment takes).

(3) If NMFS is unable to make a negligible impact determination for one or more of the applicant's marine mammal species (see 50 CFR 216.103(c)), should NMFS consider an authorization for the harassment or non-serious injury of these species under section 101(a)(5)(D) of the MMPA by USCG activities.

#### Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning the request and the structure and content of the regulations (if appropriate) to allow the taking (see **ADDRESSES**). NMFS will consider this information in developing an environmental assessment under the National Environmental Policy Act, and, if appropriate, propose regulations to authorize the taking. If NMFS proposes regulations to allow this take, interested parties will be given time and opportunity to comment.

Dated: October 10, 1996.

Patricia Montanio,

*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 96-26634 Filed 10-16-96; 8:45 am]

BILLING CODE 3510-22-F

#### National Telecommunications and Information Administration

##### Performance Review Board; Membership

Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the National Telecommunications and Information Administration Senior Executive Service (SES) Performance Appraisal System:

Kathryn C. Brown  
Dennis R. Connors  
William D. Gamble  
Bernadette McGuire-Rivera  
Richard D. Parlow  
Neal B. Seitz  
William F. Utlaut  
Barbara S. Wellbery  
Ronald P. Hack  
Anthony J. Calza,

*Acting Executive Secretary, National  
Telecommunications and Information  
Administration, Performance Review Board.*

[FR Doc. 96-26565 Filed 10-16-96; 8:45 am]

BILLING CODE 3510-BS-M

#### Patent and Trademark Office

##### Request for Comments on the Chairman's Text of the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, To Be Held in Geneva From December 2 to 20, 1996

**AGENCY:** Patent and Trademark Office,  
Commerce.

**ACTION:** Notice and request for public  
comments.

**SUMMARY:** As the Administration prepares for the Diplomatic Conference on Certain Copyright and Neighboring Rights Questions, to be held in Geneva from December 2 to 20, 1996, we invite interested parties to submit written comments on the Chairman's text and to attend a public briefing to discuss the Chairman's text of the Diplomatic Conference. During the briefing, Jukka Liedes, Chairman of the Committee of Experts, will discuss the text and will be available to answer questions.

**DATES:** The briefing will be held on November 12, 1996, from 1 p.m. to 5 p.m.

Written comments on the Chairman's text are due on or before November 22, 1996.

**ADDRESSES:** The briefing will be held in Marriott's Crystal Forum, a part of the Crystal City Marriott Hotel located in The Underground, 1999 Jefferson Davis Highway, Arlington, Virginia.

A transcript of the meeting will be made available for public inspection in room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia. The transcript will also be made available through the Patent and Trademark Office's home page, which is located at [www.uspto.gov](http://www.uspto.gov).

Written comments should be submitted to the Commissioner of Patents and Trademarks, Box 4, Patent and Trademark Office, Washington, D.C. 20231, marked to the attention of Ms. Carmen Guzman Lowrey, Associate Commissioner for Governmental and International Affairs. Written comments may also be submitted electronically by sending them to Mr. Keith Kupferschmid at [diploconf@uspto.gov](mailto:diploconf@uspto.gov).

All written comments received will be made available for public inspection in room 902 of Crystal Park Two, 2121 Crystal Drive, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. Keith M. Kupferschmid by telephone at (703) 305-9300, by facsimile at (703) 305-8885, by electronic mail at [diploconf@uspto.gov](mailto:diploconf@uspto.gov) or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Box 4, Patent and

Trademark Office, Washington, D.C. 20231. It is not necessary for interested parties to contact the PTO to request to attend the briefing.

**SUPPLEMENTARY INFORMATION:** The United States is committed to making progress in the World Intellectual Property Organization (WIPO) toward improving international protection for works protected by copyright and neighboring rights. We want to build upon the international intellectual property norms that were set in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPs). This is essential, especially in view of the need to deal with the intellectual property issues associated with the Global Information Infrastructure (GII). To accomplish this goal, the members of WIPO, with the leadership of the United States, are working to establish three new international agreements, commonly referred to as—

- A Protocol to the Berne Convention for the Protection of Literary and Artistic Works, which would modernize the Berne Convention to take into account new forms of expression and new uses of copyrighted works that have evolved due to technological developments since the Berne Convention's most recent revision in 1971.

- A New Instrument for the Protection of Performers and Producers of Phonograms, which would improve international standards of protection for sound recordings, and protect the rights of certain performers in respect of their live performances.

- A Treaty for the Sui Generis Protection of Databases, which would ensure adequate incentives to invest in creating databases, through a new type of protection that would safeguard databases against destruction of their commercial value.

These agreements would provide the levels of protection for both copyright and neighboring rights that are critical to the development of the commercial potential of the GI.

Much progress has been made in the negotiations in WIPO through the submission of treaty proposals by the United States and other countries. Based on these submissions and the views expressed in meetings of the Committee of Experts, the Chairman of the Committee of Experts has prepared three draft treaties which address digital and conventional copyright issues. These proposed treaties will be taken up at a Diplomatic Conference on Certain Copyright and Neighboring Rights Issues to be convened December 2-20, in Geneva at WIPO headquarters.