method of achieving horizontal VOA has been determined, two major changes were made to FMVSS No. 108 relating to VOA headlamps: (1) The beam was made to be much wider and much less sensitive to horizontal misaim and, (2) no horizontal aiming screws or mechanisms other than a horizontal VHAD were permitted. Valeo needs separate aim adjustments to be incorporated for the upper beam contributors to maintain a uniform gap around the headlamp housing. As a consequence, it has petitioned to amend the standard to allow the upper beams to have their own horizontal and vertical aiming capabilities. In addition, to make the consumer aware of these additional aiming systems, Valeo recommended that the light emitting surface of each upper beam contributor be marked ''VO.''

In 1996, a Regulatory Negotiation Committee that included representatives of foreign manufacturers worked with the agency over many months to achieve a consensus on all issues and the specific text of the amendment to FMVSS No. 108 to allow VOA headlamps. Because the present aiming requirements, as applied to VOA, were part of that consensus agreement, the agency is reluctant to change these requirements, absent a compelling safety reason to do so.

During the negotiated rulemaking, all of the vehicle manufacturers represented on the committee stated that they were capable of building vehicles as accurately as needed to install VOA headlamps. However, this degree of precision in assembly adds cost.

Valeo's petition is based on two rationales. The first is a desire to have an aesthetically pleasing headlamp by overcoming inaccuracies in the design and assembly of motor vehicles such that the headlamp housing may be purposefully misaimed, within a certain range, to help assure the desired visually symmetric size of the gap between the vehicle body and the headlamp or between the headlamp reflector and the surrounding headlamp housing. The second is to achieve harmonization with European standards.

Given Valeo's, as well as other manufacturers', desire for alternative aiming systems, the agency believes it is incumbent on Valeo and the industry to develop a single, objective method for vertical and horizontal aiming all VOA headlamps which could be incorporated into FMVSS No. 108. The agency does not intend to assess individual manufacturer's petitions for alternatives to the current requirements. The agency recently used a similar rationale to deny a petition from Federal-Mogul Lighting Products (Federal-Mogul) (66 FR 42985). Federal-Mogul petitioned to amend FMVSS No. 108 to allow headlamps that are aimed visually or optically to have a horizontal adjuster system that does not have the required ±2.5 degree horizontal adjustment range or the VHAD indicator required by the standard. In addition, the agency does not expect to give up the value that simultaneous beam aim provides. The agency believes that having simply aimed headlamps generally promotes more correctly aimed headlamps in the field. This is especially important, given the low incidence of periodic headlamp aim inspection in the United States and the likely lower level of experience of the service and inspection technicians and the public.

In accordance with 49 CFR part 552, the agency has reviewed the petition and concluded that it should not be granted. Accordingly, it denies Valeo's petition.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 31, 2002.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 02–28558 Filed 11–8–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 021017237–2237–01; I.D. 090302F]

RIN 0648–AQ51

Protocol for Access to Tissue Specimen Samples from the National Marine Mammal Tissue Bank

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

ACTION: Proposed rule.

SUMMARY: The NMFS proposes to make available tissue specimen samples to the scientific community for research that is consistent with the goals of the National Marine Mammal Tissue Bank (NMMTB) and the Marine Mammal Health and Stranding Response Program (MMHSRP). The intent of this proposed rule is to allow the scientific community the opportunity to comment on the protocol for requests for tissue specimen samples from the NMMTB.

DATES: Comments must be received by 5 p.m. EST on December 12, 2002. Comments transmitted via e-mail will not be accepted.

ADDRESSES: Submit your comment(s) to Marine Mammal Health and Stranding Response Program (MMHSRP), Program Manager, NOAA, NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910–3282. Comments may also be sent via facsimile (fax) to 301–713–0376. To submit e-Comments (see **SUPPLEMENTARY INFORMATION**.)

FOR FURTHER INFORMATION CONTACT: Dr. Teri Rowles, Marine Mammal Health and Stranding Response Program, 301–713–2322 ext 178.

SUPPLEMENTARY INFORMATION:

E-Comments Pilot Program

NMFS encourages the public to participate in this proposed rulemaking by submitting comments. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project (see **ADDRESSES**). The e-Comments pilot project is designed to introduce electronic rulemaking to NMFS an its constituents. The public is encouraged to use the new web site to compose and submit comments on this proposed rule and the associated supporting documents to help NMFS fully evaluate this new technology. In submitting comments, please include your name and address, indicate if you are commenting on the proposed rule or other rulemaking documents, and give the reason for each comment. If you are commenting on the proposed rule, indicate to which specific section each comment applies. NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. NMFS will consider all comments received during the comment period, regardless of how they were submitted, and NMFS may make changes in the final rule in consideration of them. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site http://ocio.nmfs.noaa.gov/ibrm-ssi/index.shtml after the comment period closes.

Electronic Access

Several of the background documents for the MMHSRP and the NMMTB Specimen Access Policy can be downloaded from the Health and Stranding Response Program web site at

http://www.nmfs.noaa.gov/prot__res/.PR2.

Background

The NMMTB was established in 1992 and provides protocols, techniques, and physical facilities for the long-term storage of tissues from marine mammals. Scientists can request tissues from this repository for retrospective analyses to determine environmental trends of contaminants and other analytes of interest. The NMMTB is currently managed in collaboration with the National Institute of Standards and Technology (NIST) and is housed at the Hollins Marine Laboratory in Charleston, SC and the NIST campus in Gaithersburg, MD as part of the National Biomonitoring Specimen Bank. The NMMTB collects, processes, and stores tissues from specific indicator species (e.g., Atlantic bottlenose dolphins, Atlantic white sided dolphins, pilot whales, harbor porpoise), animals from mass strandings, animals that have been obtained incidental to commercial fisheries, animals taken for subsistence purposes, biopsies, and animals from unusual mortality events.

Each tissue specimen consists of duplicate samples (denoted A and B) of approximately 150 g. each. These duplicate samples are banked in the NMMTB in separate liquid nitrogen vaporphase freezers and are maintained at -150oC. When a portion of a tissue specimen is requested for analysis, the ''B'' sample of that specimen can be cryogenically homogenized and aliquoted into approximately 20 subsamples of 6 to 8 g. each. The ''A'' sample of each specimen remains as a bulk sample and will only be homogenized after all portions from the corresponding ''B'' sample have been depleted and there is sufficient justification to homogenize the remaining material. Thus, 50 percent of each specimen is available to the scientific community for research and scientific evaluations consistent with the goals of the NMMTB and 50 percent is intended for long-term storage as a more permanent archive for decades. The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

Under 16 U.S.C. 1421*f*, section 407(d)(1) of the Marine Mammal Protection Act, the NMFS must establish criteria for access to marine mammal tissues in the NMMTB and make those criteria available for public review and comment. In addition, NMFS must establish criteria for access to tissue analyses conducted pursuant to 16 U.S.C. 1421f, section 407(b) and data in the central marine mammal data base maintained under 16 U.S.C. 1421*f*, section 407(c). NMFS will establish these additional criteria in subsequent rulemaking.

There is only a very limited amount of samples available and the applicants for tissue specimen samples from the NMMTB will need to demonstrate that their research will fulfill the goals of the NMMTB and MMHSRP and that comparable tissue samples to accomplish the goals of the proposed research could not be readily obtained from other sources. The goal of the MMHSRP is to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

How To Apply

1. Applicants must submit a written request with attached study plan to the MMHSRP Program Manager, NMFS/Office of Protected Resources (see **ADDRESSES**).

2. The following specific information must be included in the request:

a. A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use is consistent with the goals of the NMMTB and the MMHSRP.

b. A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit,

c. Name of principal investigator, official title, and affiliated research or academic organization;

d. Specific tissue sample and quantity desired;

e. Justification for use of banked tissue;

f. Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues. Standard Reference Materials for use in the analysis of marine mammal tissues can be purchased from the NIST;

g. Estimated date for completion of research, and schedule/date of subsequent reports;

h. Agreement that all research/findings based on use of the banked tissue will be reported to the NMMTB and the MMHSRP Program Manager; and

i. Agreement that credit and acknowledgment will be given to NMFS, U.S. Geologic Service (USGS), NIST, U.S. Fish and Wildlife Service (USFWS), the NMMTB, and the collector for use of banked tissues. The applicant shall insert the following acknowledgment in all publications, abstracts or presentations based on research using the banked tissue:

The specimens used in this study were provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

3. Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

a. Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species, and

b. Representatives of the NMMTB Collaborating Agencies (NMFS, USFWS, USGS Biological Resources Division, and NIST).

If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which maybe outside of NMFS or USFWS but within the federal government.

4. Review committees for requests involving species managed by Department of the Interior will be chaired by the USFWS Representative of the NMMTB Collaborating Agencies. All other review committees will be chaired by the MMHSRP Program Manager.

5. Recommendations on the request and an evaluation of the study plan will be provided by each committee chair to the Director, Office of Protected Resources, NMFS.

6. The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee and determination that the proposed use of the banked tissue

specimen sample is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

7. Shipping and homogenization costs related to the use of any specimens from the NMMTB will be borne by the applicant.

8. The applicant can keep or dispose of the tissue specimen sample after the research is completed.

Classification

This proposed rule contains collection-of-information requirements and, therefore, is subject to the provisions of the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Applicants will be submitting a written request with attached study plan to the MMHSRP to apply for a tissue specimen sample from the NMMTB. Applicants will also report all research/findings based on use of the banked tissue to the NMMTB and the MMHSRP Program Manager.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the usti technology. Send comments on these or any other aspects of the collection of information to the Office Of Protected Resources at the ADDRESSES above, and to OMB at the Office of Information and Regulatory Affairs, Office of Management land Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This action will not have an adverse effect on marine mammals under the Marine Mammal Protection Act.

This proposed rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

This proposed rule has been determined not to be significant for the purposes of Executive Order 12866.

The Chief Counsel for Regulation at the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The facts and purpose of this rule appears in the background section of the preamble and are not repeated here. There are approximately 10,000 that will be eligible to apply for tissue samples under this rule. These entities include both large and small entities such as universities, non-profits, small businesses, and individuals. However, we anticipate that only approximately 10 applicants total will actually request tissues specimen samples. There is no fee for the sample, but there is a cost to the applicant of approximately $3.57 (Postage, $.37 plus copying (20 pages x .16) = $3.57). The copying costs would be the applicant's study plan which they will be submitting. The total for the ten anticipated applicants is $35.70 ($3.57 x 10 applicants = $35.70). Because the costs to applicants are minimal, it is concluded that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Confidential business information, Fisheries and Marine mammals, Reporting and record keeping requirements.

Dated: November 4, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory programs, national Marine Fisheries Service.

For the reasons set out in the preamble, the National Marine Fisheries Service (NMFS) proposes to amend 50 CFR part 216 as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.47 is added to read as follows:

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) *Applications for the National Marine Mammal Tissue Bank samples (NMMTB).* (1) A principal investigator or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, NMFS/Office of Protected Resources. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use is consistent with the goals of the NMMTB and the NMHSRP.

(A) The goals of the NMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Justification for use of banked tissue;

(vi) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance program, which was designed to ensure the accuracy, precision, level of detection, and intercompatibility of data resulting from chemical analyses of marine mammal tissues;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB and the MMHSRP Program Manager; and

(ix) Agreement that credit and acknowledgment will be given to NMFS, US Geologic Service (USGS), National Institute of Standards and Technology (NIST), U.S. Fish and Wildlife Service (USFWS), the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall report to the MMHSRP Program Manager all research findings based on use of the banked tissue in accordance with the schedule submitted with the application.

(3) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(4) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST). If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which maybe outside of NMFS or USFWS but within the Federal Government.

(5) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members.

(6) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(7) The applicant can keep or dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed.

(b) [Reserved]

[FR Doc. 02–28512 Filed 11–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 697

[I.D. 110402A]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits (EFPs)

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

ACTION: Notification of a request for EFPs to harvest American lobster; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow a maximum of six vessels to conduct fishing operations that are otherwise restricted by the regulations governing the American lobster fisheries of the Northeastern United States.

The EFP involves the catching, retaining and dissecting of 200 sub-legal lobsters as part of an ongoing research project to both monitor the offshore lobster fishery and to determine the size at which offshore lobster reach reproductive maturity. The experiment would involve only one experimental trap per vessel, and a total of six vessels, for a 1–month time period in the fall of 2002 and a 1–month time period in the spring of 2003. It would not involve the authorization of any additional trap gear in the area. The six participating commercial fishing vessels will collect detailed abundance and size frequency data on the composition of lobsters in three general offshore study areas in a collaborative effort with the University of New Hampshire (UNH) and the Atlantic Offshore Lobstermen's Association (AOLA) project on an American lobster monitoring and data collection program. Part of this research includes a size at maturity study using lobsters from each of the three study areas. One of the most reliable methods to determine size at maturity involves dissection of the female ovaries and examination of the eggs. This EFP requests that each of the six participating commercial fishing vessels utilize one modified juvenile lobster collector trap each to collect a project total of 200 sub-legal lobsters that would be collected and dissected from the three study areas to accurately determine size at maturity. Therefore, this document invites comments on the issuance of EFPs to allow six commercial fishing vessels utilize a maximum of six modified lobster traps and to collect, and retain a project total of 200 sub-legal American lobsters.

DATES: Comments on this action and application for an EFP for offshore lobster monitoring and data collection must be received on or before November 27, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NOAA Fisheries, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Lobster EFP Proposal''. Comments may also be sent via facsimile (fax) to (978) 281–9117.

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, (978) 281–9234.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised,