

receive public comments on NMFS' intent to prepare an environmental impact statement (EIS) on the effects of oil and gas activities (e.g., seismic surveys and exploratory drilling) in the Arctic Ocean (U.S. Chukchi and Beaufort Seas).

**DATES:** The comment period for the scoping process is from February 8, 2010, through April 9, 2010. See SUPPLEMENTARY INFORMATION under the "Meeting Dates, Times, and Locations" heading for the dates and locations of the public scoping meetings.

**ADDRESSES:** The public has the opportunity to submit comments and statements regarding NMFS' intent to prepare this EIS using the following methods:

- Mail: P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910;
- Facsimile (fax) to: (301) 713-0376;
- E-mail to:

[arcticeis.comments@noaa.gov](mailto:arcticeis.comments@noaa.gov); or

- Public hearings: submit oral or written comments at public scoping meetings.

Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size. Information on this project can also be found on the Protected Resources webpage at: <http://www.nmfs.noaa.gov/pr/permits/eis/arctic.htm>.

**FOR FURTHER INFORMATION CONTACT:** Michael Payne, Office of Protected Resources, NMFS, (301) 713-2289 ext. 110.

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 8, 2010 (75 FR 6175), NMFS announced its intent to prepare an EIS on the effects of oil and gas activities in the U.S. Chukchi and Beaufort Seas. In that notice, NMFS announced that it would hold a total of eight public scoping meetings in February and March 2010. However, the February 8, 2010 (75 FR 6175), notice only provided dates, times, and locations for the first three meetings.

NMFS has scheduled additional public scoping meetings to be held in Wainwright, Barrow, Nuiqsut, Kaktovik, and Anchorage. The purposes of these meetings are to provide an opportunity for the public to learn about the proposed action, identify issues to be addressed in the EIS process, and to submit oral or written comments on this proposal.

#### Meeting Dates, Times, and Locations

The dates, times, and locations of the public scoping meetings are as follows:

- (1) March 9, 2010, 7 - 9 p.m., Wainwright Community Center, Wainwright, Alaska;
- (2) March 10, 2010, 7:30 - 9:30 p.m., Inupiat Heritage Center, Barrow, Alaska;
- (3) March 11, 2010, 7 - 9 p.m., Nuiqsut Community Center, Nuiqsut, Alaska;
- (4) March 12, 2010, 6:30 - 8:30 p.m., Kaktovik Community Center, Kaktovik, Alaska; and
- (5) March 23, 2010, 7 - 9 p.m., Egan Center, 555 West Fifth Avenue, Anchorage, Alaska 99501.

#### Special Accommodations

These meetings are accessible to people with disabilities. Requests for sign language interpretation or auxiliary aids should be directed to Sheyna Wisdom by telephone at (907) 261-6705 or by e-mail at [Sheyna\\_Wisdom@URSCorp.com](mailto:Sheyna_Wisdom@URSCorp.com) at least 7 days before the scheduled meeting date.

Dated: February 18, 2010.

**Wanda L. Cain,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XU10**

#### Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Permit

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

**ACTION:** Notice; request for comments.

**SUMMARY:** NMFS proposes to issue a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals from the Central North Pacific (CNP) stock of endangered humpback whales (*Megaptera novaeangliae*) by the Hawaii-based longline fisheries (deep-set and shallow-set). In accordance with the Marine Mammal Protection Act (MMPA), NMFS has made a preliminary determination that incidental taking from commercial fishing will have a negligible impact on CNP humpback whales; a recovery plan was completed

in 1991; and vessels have been registered, a monitoring plan is in place, and a NMFS has insufficient funds to develop a Take Reduction Plan (TRP) at this time to address taking in these fisheries. Accordingly, NMFS proposes to issue the required permits to the Hawaii-based longline fisheries. NMFS solicits public comments on the negligible impact determination and on the proposal to issue this permit.

**DATES:** Comments must be received by March 26, 2010.

**ADDRESSES:** A draft of the negligible impact determination is available on the Internet at the following address: <http://fpir.noaa.gov/>. Written copies of the determination may be requested from, and comments on the determination and proposed permit should be sent to: Lisa Van Atta, Assistant Regional Administrator, Protected Resources Division, NMFS Pacific Islands Region, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814. Comments may also be sent by e-mail to: [MMPA.permit-PIR@noaa.gov](mailto:MMPA.permit-PIR@noaa.gov) or by fax to (301) 427-2533. Comments received after the 30-day comment period may not be considered or made part of the record.

The recovery plan for humpback whales is available on the Internet at the following address: <http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals>.

**FOR FURTHER INFORMATION CONTACT:** Lisa Van Atta, Assistant Regional Administrator, Protected Resources Division, Pacific Islands Region, (808) 944-2257 or Tom Eagle, Office of Protected Resources, (301) 713-2322, ext. 105.

**SUPPLEMENTARY INFORMATION:** NMFS is now considering the issuance of a permit under MMPA section 101(a)(5)(E) to vessels registered in the Hawaii-based longline fisheries (deep-set and shallow-set) to incidentally take individuals from the CNP stock of humpback whales (*Megaptera novaeangliae*), which are listed as endangered under the Endangered Species Act (ESA).

The Hawaii-based longline fisheries do not take other species or stocks of threatened or endangered marine mammals; therefore, no other species or stocks are considered for this proposed permit. The information available from the Hawaii-based deep-set longline fishery since 1994 indicates that there has never been incidental mortality or serious injury of CNP humpback whales; therefore, none is anticipated in the 3-year duration of the permit. Since 1994, there has been only one serious injury of a CNP humpback whale in the Hawaii-based shallow-set longline

fishery; that serious injury occurred in 2006. Consequently, the permit would authorize harassment and non-lethal injury of humpback whales incidental to the deep-set longline fishery. Permitted lethal (serious injury or mortality) taking of CNP humpback whales incidental to the Hawaii-based longline fisheries is limited to the shallow-set fishery.

The data for considering such an authorization were reviewed coincident with the publication of the 2010 List of Fisheries (LOF) (74 FR 58859, November 16, 2009), and the draft 2009 marine mammal stock assessment reports (SAR) (Allen and Angliss 2009). The taking of this stock of humpback whales occurs incidental to fisheries in Alaskan, as well as Hawaiian, waters. The current negligible impact determination includes taking in Alaska and Hawaii waters; however, this proposed permit is limited to the Hawaii-based longline fisheries. Alaska-based fisheries will be addressed in a future permit.

#### Statutory Background

Section 101(a)(5)(E) of the MMPA (16 U.S.C. 1371(a)(5)(E)) requires NMFS to authorize the incidental taking of individuals from marine mammal species or stocks listed as threatened or endangered under the ESA, as amended (16 U.S.C. 1531 *et seq.*) in the course of commercial fishing operations if NMFS determines that: (1) incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a TRP has been developed or is being developed for such species or stock.

#### History of Applying Negligible Impact in Fisheries

Among the requirements of MMPA section 101(a)(5)(E) to issue a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine whether the incidental taking from commercial fisheries would have a negligible impact on the affected stock or stocks of threatened or endangered marine mammals. A negligible impact determination is required pursuant to MMPA section 101(a)(5) (A) & (D) for authorizing the take of small numbers of any stock of marine mammals incidental to activities other than commercial fishing (termed the "Small Take Program") and under

MMPA section 101(a)(5)(E) authorizing the take of threatened or endangered marine mammals incidental to commercial fishing operations.

Under the MMPA's provisions for the Small Take Program, NMFS must determine if the taking (by harassment, injury, and mortality) incidental to specified activities will have a negligible impact on the affected stocks of marine mammals. For permitting the take of threatened or endangered marine mammals incidental to fishing operations under the MMPA, NMFS must determine if mortality and serious injury incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals.

NMFS has implemented these programs, including a qualitative definition of negligible impact, through regulations and has relied upon qualitative and quantitative approaches to determine the levels of taking that would result in a negligible impact to affected species or stocks of marine mammals. The quantitative approach is more appropriate for serious injury and mortality than for non-lethal takes because mortality and serious injury are considered removals from the population and can be evaluated by well-documented models of population dynamics.

The MMPA does not define "negligible impact." There is, however, a reference to negligible impact in the House of Representatives committee report for the MMPA Amendments of 1981. That report provides that, "negligible" is intended to mean an impact which is able to be disregarded. In this regard, the committee notes that Webster's Dictionary defines the term "negligible" to mean "so small or unimportant or of so little consequence as to warrant little or no attention" (House of Representatives, Report 97-228, September 16, 1981). NMFS defined negligible impact in regulations for the Small Take Program (50 CFR 216.103) as "an 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."

This qualitative definition of negligible impact was the standard NMFS used to implement the Small Take Program from its beginning in 1981 through 1994, when additional amendments to the MMPA required a more quantitative approach for assessing what level of removals from a population stock of marine mammals could be considered a negligible impact. It remains the only formal definition of

negligible impact for implementing the MMPA, and its use was expanded to include determinations related to incidental taking from commercial fishing (50 CFR 229.2).

The MMPA Amendments of 1994 were enacted primarily to establish a regime to govern the taking of marine mammals incidental to commercial fishing operations, including MMPA section 101(a)(5)(E). These amendments were based in large part on a legislative proposal NMFS submitted to Congress in 1992. This legislative proposal was, in turn, based on recommended guidelines, required by MMPA section 114, from the Marine Mammal Commission (Commission) in early 1990 (Recommended Guidelines to Govern the Incidental Taking of Marine Mammals in the Course of Commercial Fishing Operations after October 1993, transmitted to NMFS on July 12, 1990). In these guidelines, the Commission recommended, among five other characteristics of a mechanism to govern the take of threatened and endangered marine mammals incidental to fishing, "the authorized level of take would have a negligible effect on population size and recovery time..." The Commission provided initial quantitative guidance on negligible effect on population size and recovery time as the following: "an effect that (a) will not cause or contribute to a further decline in distribution or size lasting more than twelve months; and/or (b) will not cause greater than a 10 percent increase in the best available estimate of the time it will take the affected species or population to recover to its maximum net productivity level."

The Commission's two-part recommendation suggests that a take would be negligible if it had an effect lasting no more than 12 months (that is, one that would be so small that it could not be detected from natural variability or would be expected to be alleviated by the next breeding season) or would delay the period of recovery by no more than 10 percent. The first of these quantitative approaches is more appropriate for an activity that would have a relatively short duration relative to the life expectancy of the affected stocks of marine mammals and, in the case of commercial fishing, for the remote likelihood of serious injury or mortality indicated by classification as a Category III fishery. Where incidental mortality or serious injury may occur on a more regular basis, as expected for interactions with Category I or II commercial fisheries, the delay-in-recovery standard would be more appropriate.

NMFS has consistently used the Commission's delay-in-recovery guideline in distinguishing negligible from non-negligible impact. To apply this criterion, however, NMFS had to estimate what annual levels of removal would cause no more than a 10-percent delay in time to recovery. Such an effort was initiated at a NMFS-convened workshop (June 1994) to develop guidelines for preparing marine mammal stock assessment reports. Among the many items considered at that workshop, participants agreed that recovery factors (RF) used in the calculation of Potential Biological Removal (PBR) for each stock of marine mammals should compensate for uncertainty and possible unknown estimation errors. In discussing the recovery factor for stocks of endangered species of marine mammals, participants noted that a RF of 0.1 would preserve 90 percent of net annual production for recovery of the stock, limiting the proportion of net annual production of the stock available for authorization of mortality or serious injury incidental to human-caused mortality. Participants also stated that reserving such a high proportion of net annual production of endangered species was appropriate to "allow stocks to recover at near maximum rates, and to minimize the probability that naturally occurring stochastic mortality would result in extinction of the stock" (Barlow *et al.*, 1995 at 10). Workshop participants also noted, "authorized levels of human-related mortality should increase recovery time of endangered stocks by no more than 10 percent (consistent with the goal stated in NMFS legislative proposal)" (Barlow *et al.* 1995 at 11, 12). Consequently, participants at the workshop recommended, and NMFS accepted, after public review and comment, that mortality and serious injury remaining at or below PBR for an endangered stock (with 0.1 as the RF in the PBR calculation) would have an insignificant or negligible impact on the affected stock.

In applying the negligible impact criterion to determinations made initially under the MMPA Amendments of 1994, NMFS understood that total human-caused mortality and serious injury limited to a level no greater than a PBR calculated with RF of 0.1 would be negligible; however, MMPA section 101(a)(5)(E) required a determination related to the impact of mortality and serious injury incidental to commercial fishing rather than incidental to all human activities. Accordingly, NMFS proposed to use, and subsequently used,

10 percent of any stock's PBR as the upper limit of mortality and serious injury incidental to commercial fishing in making the first negligible impact determinations (60 FR 31666, June 16, 1995 (proposed) and 65 FR 45399, August 31, 1995 (interim)). A rationale supporting this approach was that a negligible (or insignificant) level of fishery-related mortality and serious injury should be only a small portion of the maximum level of mortality and serious injury a stock could sustain. NMFS noted that the threshold value was a starting point; that is, the criterion should not be used rigidly but should produce the first estimate, which, in turn, could be modified on a case-by-case basis according to existing information. Although 10 percent of PBR was used in 1995 in issuing permits to fisheries under MMPA section 101(a)(5)(E), NMFS later became concerned that 10 percent of PBR may result in a much smaller number than the 10-percent-delay criterion would require (Wade and Angliss, 1997).

Later, Wade (1998) summarized the robustness trials conducted in support of the PBR approach for marine mammal conservation, including an aspect that was missing from simulations conducted for the NMFS-convened workshop in 1994: exploring the maximum level of annual removals from a population that would result in no more than a 10 percent delay in the time a population would need for recovery to its Maximum Net Productivity Level (MNPL). Wade (1998) found that an upper limit of annual removals equal to the value of a PBR calculation with a RF of 0.15 would allow 95 percent of simulations to equilibrate at or above MNPL, which was an initial step in quantifying the maximum number of annual removals resulting in a negligible impact. However, in some applications the negligible impact standard must also address a performance criterion for marine mammal stocks that are not necessarily depleted. Wade (1998), therefore, reported that an upper limit of annual mortality limited to a value equal to a PBR calculation with a RF of 0.1 would allow 95 percent of simulations to equilibrate within 95 percent of the carrying capacity of the affected stock of marine mammals.

Wade's (1998) performance testing included removals to the threshold level for a period of 100 years and evaluated the robustness of each case over a range of bias or uncertainty in productivity rates, abundance estimation, and mortality estimation. Thus, the limits are appropriate for use on long-term average removals and do not indicate

that a short-term level of removal exceeding the threshold would delay time to recovery by more than 10 percent.

In 1998, NMFS published a notice (63 FR 71894, December 30, 1998) advising the public that the agency was extending the 3-year permit issued to fisheries in 1995 to authorize the taking of threatened or endangered marine mammals. This notice also informed the public that NMFS considered the 6-month extension of the permit an opportunity to review existing criteria for the issuance of permits and to address issues that have arisen since the permits were first issued. NMFS solicited public comments to develop alternatives to 10 percent of PBR as a criterion for determining negligible impact; no comments were received.

Having received no comments upon which to develop alternatives for determining negligible impact, NMFS published a notice proposing to issue permits under MMPA section 101(a)(5)(E) in 1999 (64 FR 28800, May 27, 1999). The notice contained a statement that NMFS, through internal deliberation, had adopted the following criteria for making negligible impact determinations for such permits:

(1) The threshold for initial determination will remain at 0.1 PBR. If total human-related serious injuries and mortalities are less than 0.1 PBR, all fisheries may be permitted.

(2) If total human-related serious injuries and mortalities are greater than PBR, and fisheries-related mortality is less than 0.1 PBR, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortalities. When fisheries-related serious injury and mortality is less than 10 percent of the total, the appropriate management action is to address components that account for the major portion of the total.

(3) If total fisheries-related serious injuries and mortalities are greater than 0.1 PBR and less than PBR and the population is stable or increasing, fisheries may be permitted subject to individual review and certainty of data. Although the PBR level has been set up as a conservative standard that will allow recovery of a stock, there are reasons for individually reviewing fisheries if serious injuries and mortalities are above the threshold level. First, increases in permitted serious injuries and mortalities should be carefully considered. Second, as serious injuries and mortalities approach the PBR level, uncertainties in elements such as population size,

reproductive rates, and fisheries-related mortalities become more important.

(4) If the population abundance of a stock is declining, the threshold level of 0.1 PBR will continue to be used. If a population is declining despite limitations on human-related serious injuries and mortalities below the PBR level, a more conservative criterion is warranted.

(5) If total fisheries-related serious injuries and mortalities are greater than PBR, permits may not be issued.

Criterion 1 is the starting point for analyses. If this criterion is satisfied, the analysis would be concluded. The remaining criteria describe alternatives under certain conditions, such as fishery mortality below the negligible threshold but other human-caused mortality above the threshold, or fishery and other human-caused mortality between the negligible threshold and PBR for a stock that is increasing or stable. If criterion 1 is not satisfied, NMFS may use one of the other criteria, as appropriate.

In 2000, NMFS issued a permit to the CA/OR drift gillnet fishery to authorize the taking of threatened and endangered marine mammals incidental to its operation (65 FR 64670, October 30, 2000). For that permit, as for the current permit, NMFS used the criteria adopted in 1999 to distinguish between negligible and non-negligible impact on affected stocks of marine mammals.

#### Description of the Fishery

The Hawaii-based longline fisheries consist of two separately-managed fisheries: the deep-set (tuna-target) fishery and the shallow-set (swordfish-target) fishery. Both fisheries are limited-access fisheries, with 164 permits that are transferable. The number of active vessels in the combined deep-set and shallow-set longline fishery peaked at 141 vessels in 1991. The number of vessels in the combined longline fisheries has since ranged from 101 to 127. In 2008, there were 127 Hawaii-based longline vessels were active in the deep-set fishery, and 27 vessels were active in the shallow-set fishery. The deep-set fishery operates year-round. Hawaii-based longline vessels vary their fishing grounds depending on their target species. Most effort is to the north and south of the Hawaiian Islands between the equator and 40° N and longitudes 140° and 180° W; however, the vast majority of deep-set fishing occurs south of 20° N.

Under Federal regulations, the fishery is generally restricted to waters outside of 50 nautical miles from the entire Northwestern Hawaiian islands (NWHI) because of protected species (Hawaiian

monk seal, *Monachus schauinslandi*) interactions. Several 25–75 mile closed areas also exist around the main Hawaiian islands to prevent gear conflicts with smaller fishing vessels. Current regulations require 100 percent observer coverage for shallow swordfish sets and 20 percent observer coverage for deep tuna sets. There are fleet-wide annual limits on the number of allowable sea turtle interactions in the fisheries.

#### Current Negligible Impact Determination

NMFS evaluated the best available information in assessing the interactions between ESA-listed CNP humpback whales and the Hawaii-based longline fisheries (including observer data from 1994 to 2007), other fisheries (using primarily stranding and sightings data), and other sources of human-caused serious injury and mortality, in order to determine whether the incidental mortality and serious injury from all commercial fisheries is having a negligible impact on the stock. Allen and Angliss (2009) use an annual rate of increase of 7 percent for this stock and note this rate is considered conservative for the stock. Because the stock is increasing *despite annual human-caused mortality and serious injury exceeding 10 percent of PBR*, criterion 3 is the appropriate criterion for consideration. Thus, fishery-related mortality and serious injury would be considered negligible if such mortality, in combination with other human sources of mortality, does not exceed PBR, subject to individual review and certainty of data.

Commercial fisheries known to incidentally take humpback whales include longline fisheries, pot fisheries, known and unknown net fisheries, and purse seine fisheries in Alaska and Hawaii (Allen and Angliss (2009)). The SAR did not include the serious injury of a humpback whale incidental to the Hawaii-based shallow-set longline fishery because the necessary information was not available to SAR authors when the draft was originally prepared in 2008). Since the initiation of the NMFS observer program in 1994, there have been no reported mortalities or serious injuries of CNP humpback whales in the Hawaii-based deep-set longline fishery. However, there was one serious injury of a CNP humpback whale in the Hawaii-based shallow-set longline fishery in 2006.

The SAR also did not include reports of entangled humpback whales observed in Hawaii. The gear entangling these whales did not originate in Hawaii; therefore, some of these entangled

whales may have been included in reports from Alaska or may represent recreational, rather than commercial, fishing gear. For this analysis, NMFS has identified 9 entanglements from 2003 through 2007 that may be serious injuries (5–year mean is 1.8 whales).

Mean annual mortality and serious injury rate attributable to commercial fisheries over the 2003 - 2007 period is 5.4 whales per year (3.4 for the Alaska fisheries (Table 7 in the accompanying negligible impact analysis); 0.0 for the Hawaii-based deep-set longline fishery; 0.2 for the Hawaii-based shallow-set longline fishery (Forney, 2009), and 1.8 serious injuries reported in HI-observed entanglements (26.5 percent of the stock's PBR). The recently authorized removal of the set certificate program, which could allow for the expansion of the shallow-set fishery that primarily targets swordfish, may increase serious injury or mortality of humpback whales; however, an exposure analysis indicated that the expanded fishery is not likely to lethally take more than one humpback whale per year.

The total of mortality and serious injury of CNP humpback whales incidental to commercial fishing operations is estimated to be 5.4 whales per year from 2003–2007. This minimum estimate is greater than 10 percent of the calculated PBR for the CNP stock and less than the stock's PBR (20.4). Vessel strikes (1.6 whales per year) and entanglement in recreational fishing gear (0.2 whales per year) have been reported as additional human-caused mortality and serious injury for this stock of humpback whales. Total human-caused mortality and serious injury are less than the stock's PBR and are not expected to delay recovery of the stock by more than 10 percent more than recovery time if these removals did not occur. A more detailed description of this negligible impact determination is available on the Internet; written copies are also available upon request (see ADDRESSES).

#### Current Permit

Based on the above assessment, NMFS concludes that the incidental mortality and serious injury from commercial fishing would have a negligible impact on the CNP stock of humpback whales. The impacts on the human environment of continuing and modifying the shallow-set longline fishery, including the taking of threatened and endangered species of marine mammals, were analyzed in a draft Supplemental Environmental Impact Statement prepared by the Western Pacific Fishery Management Council (WPFMC 2008) pursuant to the

National Environmental Policy Act (NEPA) (42 U.S.C. 4231 *et seq.*) and in a biological opinion prepared pursuant to the ESA in October 2009 on this modification. The proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents. NMFS now reviews the remaining requirements to issue a permit to take CNP humpback whales incidental to the Hawaii-based longline fisheries.

**Recovery Plan.** The recovery plan for humpback whales was completed and in place in 1991. This plan has guided ESA recovery efforts for humpback whales globally since that time. Accordingly, the requirement to have a recovery plan in place or being developed is satisfied.

**Vessel Registration.** MMPA section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with existing fisher licenses, registrations, and related programs. Participants in the Hawaii-based longline fisheries are required to hold a permit under 50 CFR 665.21. The MMPA registration program has been integrated in this permitting system for the Hawaii-based longline fisheries. Accordingly, vessels in the fisheries are registered in accordance with MMPA section 118.

**Monitoring Program.** As noted above, the Hawaii-based longline fisheries have been observed since the early 1990s. Current levels of observer coverage in the deep-set fishery (20 percent or higher) are adequate to produce reliable estimates; mandatory observer coverage in the shallow-set fishery is 100%. Accordingly, as required by MMPA section 118, a monitoring program is in place.

**Take Reduction Plan (TRP).** Subject to available funding, MMPA section 118 requires a TRP in cases where a strategic stock interacts with a Category I or II fishery. The CNP stock of humpback whales is considered a strategic stock under the MMPA because humpback whales are listed under the ESA. This strategic stock interacts with the Category I and II Hawaii-based longline fisheries. Currently, there is no TRP for the CNP stock of humpback whales. The short- and long-term goals of a TRP are to reduce mortality and serious injury of marine mammals incidental to commercial fishing. However, the obligations to develop and implement a TRP are subject to the availability of funding. MMPA section 118(f)(3) (16

U.S.C. 1387(f)(3)) contains specific priorities for developing TRPs.

NMFS has insufficient funding available to simultaneously develop and implement a TRP for all stocks that interact with Category I or Category II fisheries. Most recently in March of 2009, NMFS considered multiple quantitative and qualitative factors to identify its priorities for establishing take reduction teams (TRTs) and collecting data. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS used the most recent stock assessment reports (SARs) and List of Fisheries (LOF) as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this evaluative process, the CNP stock of humpback whale was rated as "low" priority for establishing a TRT. Indeed, observer reports since 1994 indicate that there have been zero serious injuries or mortalities of a CNP humpback whale in the Hawaii-based deep-set longline fishery, and only one serious injury (and no mortalities) of a CNP humpback whale in the Hawaii-based shallow-set longline fishery. Accordingly, given these factors and NMFS' prioritization process, a TRP will be deferred under section 118 as other stocks have a higher priority for any available funding for establishing new TRPs.

As noted in the summary above, all of the requirements to issue a permit to the Hawaii-based longline fisheries have been satisfied. Accordingly, NMFS proposes to issue a permit to the Hawaii-based deep- and shallow-set longline fisheries for the taking CNP humpback whales incidental to the fisheries' operations. Taking of these whales in the deep-set fishery would be limited to non-lethal taking only (harassment and injury). Taking of these whales in the shallow-set fishery would include non-lethal taking and up to one lethal (serious injury or mortality) take per year in the shallow-set fishery. NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit.

#### References

Allen, B.M. and R.P. Angliss, R.P. 2009. Draft Alaska Marine Mammal Stock Assessments, 2009. U.S. Department of Commerce, National Marine Fisheries Service, Alaska Fisheries Science Center.

Barlow, J., S. Swartz, T. Eagle and P. Wade. 1995. U.S. Marine Mammal Stock Assessments: Guidelines for Preparation, Background, and a Summary of the 1995 Assessments. U.S. Department of Commerce, NOAA-TM-NMFS-SWFS-219.

Carretta, J.V., K.A. Forney, Lowry, M.S., Barlow, J., Baker, J., Johnston, D., Hanson, B., Brownell Jr., R.L., Robbins, J., Mattila, D.K., Ralls, K., Muto, M.M., Lynch, D., and L. Carswell. 2009. Draft U.S. Pacific Marine Mammal Stock Assessments: 2009. Department of Commerce, National Marine Fisheries Service, Southwest Fisheries Science Center.

Forney, K.A. 2009. Draft Serious injury determinations for cetaceans caught in Hawaii longline fisheries during 1994–2008. Working paper reviewed by the Pacific Scientific Review Group (PSRG–2009–9).

Wade, P. R. 1998. Calculating limits to the allowable human-caused mortality of cetaceans and pinnipeds. *Mar. Mamm. Sci.*, 14(1): 1–37.

Wade, P.R. and R. P. Angliss. 1997. Guidelines for assessing marine mammal stocks: report of the GAMMS workshop, April 3–5, 1996, Seattle, Washington. NOAA-TM-NMFS-OPR–12.

Western Pacific Regional Fishery Management Council (WPFMC), 2008. Management Modifications for the Hawaii-based Shallow-set Longline Swordfish Fishery: Proposal to Remove Effort Limit, Eliminate Set Certificate Program, and Implement New Sea Turtle Interaction Caps. Draft Amendment 18 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region Including a Draft Supplemental Environmental Impact Statement. August 12, 2008.

Dated: February 19, 2010.

**Helen M. Golde,**

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

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## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Wednesday, February 24, 2010, 2 p.m.–4 p.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Closed to the Public.

#### MATTER TO BE CONSIDERED:

*Compliance Weekly/Monthly Report—Commission Briefing*

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.