

Furthermore, NMFS enforcement officials met with the United States Coast Guard to train boarding personnel on the requirements of the plan and requested their assistance for at-sea enforcement. The known average annual human-caused mortality or serious injury, including ship strikes (0.38 animals per year) and incidental to commercial fishing (0.75 animals per year) for 1998–2005 is 1.13 sperm whales, or 62.5 percent of the PBR for the CA/OR/WA sperm whale stock.

The minimum population estimate for this stock is considered to be variable, with no obvious trend (Carretta *et al.*, 2006). However, the overall population of sperm whales has increased worldwide since it was listed under the ESA in 1973, and although it is difficult to determine a trend for the CA/OR/WA stock of sperm whales, this stock does not appear to be declining. The average annual fisheries-related mortality and serious injury for this stock is below PBR. There has not been a take of sperm whales in the CA/OR DGN fishery since 1998 and the likelihood that a sperm whale would be taken by the CA/OR DGN fishery is very low, especially given compliance with the POCTRP. Based on the trend of this stock of marine mammals, the existing management measures on the fishery, and that the estimated mortality and serious injury caused by all Category I and II commercial fisheries, including the CA/OR DGN fishery, would not cause more than a 10 percent increase in the time to recovery, a negligible determination can be made under Criterion 3 for purposes of issuing a permit under MMPA section 101(a)(5)(E).

#### Proposed Actions and Information Solicited

##### *Negligible Impact*

As required by the MMPA and as summarized above, NMFS has made a preliminary determination that incidental mortality and serious injury incidental to commercial fishing will have a negligible impact on the CA/OR/WA stock of fin whales, the Eastern North Pacific stock of humpback whales, and the CA/OR/WA stock of sperm whales. A draft of the determination is available for public review (see **ADDRESSES**), and NMFS solicits public comments on this draft determination.

##### *Recovery Plans*

A recovery plan for humpback whales was completed and issued in 1991. This plan is available on the Internet (see **ADDRESSES**). NMFS had previously

solicited public comments on a draft recovery plan for fin whales and sei whales (*Balaenoptera borealis*) (63 FR 41802, August 5, 1998); however, the plan was not completed. Subsequently, the information related to fin whales was separated from that of sei whales, and more recent information has been included in a draft recovery plan for fin whales. The draft recovery plan for fin whales is available for public review and comment (71 FR 38385, July 6, 2006). Also, NMFS has prepared a draft recovery plan for sperm whales, and this draft plan is available for public review and comment (71 FR 38385, July 6, 2006). These draft plans are available on the Internet (see **ADDRESSES**). Accordingly, NMFS determines that recovery plans for the affected endangered species of marine mammals have been or are being developed.

##### *MMPA Section 118 Requirements*

As noted in Carretta *et al.* (2006, see Appendix 1. Descriptions of U.S. Commercial Fisheries) an observer program has been in place in the CA/OR DGN fishery since 1990. The fishery has been included in the LOF since the list was initiated under MMPA section 118. The proposed 2006 LOF (71 FR 20941, April 24, 2006) estimates 85 vessels in the fishery, 57 vessels were registered in 2005, and 49 vessels are currently registered as required by MMPA section 118(c). NMFS anticipates additional vessels will be registered prior to the start of the fishing season. NMFS promulgated final regulations to implement the POCTRP on October 3, 1997 (62 FR 51805). The plan was subsequently revised to modify specifications for deploying pingers, which allowed safer deployment (64 FR 3431, January 22, 1999). These regulations are available on the Internet (see **ADDRESSES**). Accordingly, NMFS determines that the requirements of MMPA section 118 have been satisfied for the CA/OR DGN fishery.

##### *Proposed Action*

The impacts of implementing the HMS FMP, including the taking of threatened and endangered species of marine mammals, were analyzed in an Environmental Impact Statement for the HMS FMP and in a biological opinion prepared in February 2004 on the proposed adoption of the HMS FMP. The proposed permit would have no additional impact to the human environment beyond those analyzed in February 2004; therefore, additional environmental analyses were not conducted. Based on requirements of section 101(a)(5)(E) of the MMPA, NMFS proposes to issue a permit to

allow the incidental, but not intentional, taking of three stocks of endangered or threatened marine mammals to the CA/OR DGN fishery, fin whale, CA/OR/WA stock; humpback whale, Eastern North Pacific stock; and sperm whale, CA/OR/WA stock. This permit may be suspended or revoked if the level of take is likely to result in an impact that is more than negligible. As required by the MMPA, NMFS has determined that a recovery plan has been developed or is being developed for each of these species and that a monitoring program has been established, vessels engaged in the subject fishery are registered, and a take reduction plan has been developed. NMFS solicits public comments on this proposed permit.

#### References

- 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-SWFSC-219. 162 p.
- Carretta, J.V., K.A. Forney, M.M. Muto, J. Barlow, J. Baker, B. Hanson, and M.S. Lowry. 2006. U.S. Pacific Marine Mammal Stock Assessments: 2005. U.S. Department of Commerce, NOAA-TM-NMFS-SWFSC-388.
- Pacific Fishery Management Council. 2003. Final Environmental Impact Statement for U.S. West Coast Fisheries for Highly Migratory Species.

Dated: July 25, 2006.

#### James H. Lecky,

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

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## DEPARTMENT OF COMMERCE

### Notice of Intent To Conduct Restoration Planning

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Commerce.

**SUMMARY:** The natural resource trustees (the Trustees) hereby notify the public of their intent to conduct restoration planning activities for injuries to natural resources caused by the Bouchard B-120 Oil Spill that occurred on or about April 27, 2003. On that date, the Bouchard B-120, owned and operated by the Bouchard Transportation Company, grounded on a shoal in Buzzards Bay, which is located off the coasts of Massachusetts and Rhode Island, and released between 22,000 and 98,000 gallons of No. 6 fuel oil into the environment. The Trustees include the:

National Oceanic and Atmospheric Administration, U.S. Department of Commerce; U.S. Fish and Wildlife Service, U.S. Department of the Interior; Executive Office of Environmental Affairs, Commonwealth of Massachusetts; State of Rhode Island and Providence Plantations, Department of Environmental Management.

The purpose of restoration planning is to evaluate potential injuries to natural resources and services resulting from the spill and utilize that information to determine the need for, and scale of, restoration actions.

The public is invited to participate in the restoration planning process by reviewing and commenting on documents contained in the Administrative Record, attending public meetings as scheduled, and reviewing and commenting on the Draft and Final Restoration Plans when such documents have been completed.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this document, documents contained in the Administrative Record, or the restoration planning process, contact: Frank Csulak, Injury Assessment Coordinator, National Oceanic and Atmospheric Administration, Office of Response and Restoration, HAZMAT Division, 74 Magruder Road Highlands, NJ 07732, 732-872-3005, [Frank.Csulak@NOAA.gov](mailto:Frank.Csulak@NOAA.gov).

**SUPPLEMENTARY INFORMATION:** *Oil Spill Incident:* On the afternoon of April 27, 2003, the Bouchard B-120, owned and operated by the Bouchard Transportation Company, Inc. (Bouchard), grounded on a shoal soon after entering the western approach to Buzzards Bay from the south. The tugboat Evening Tide was towing the barge that was laden with No. 6 fuel oil from Philadelphia to the Mirant Power Generating Facility in Sandwich, Massachusetts. Bouchard notified the United States Coast Guard (USCG) of a release of oil at approximately 5:30 p.m. and anchored in Buzzards Bay per order of the USCG. That evening, divers discovered a 12 foot by 2 foot hole in the No. 2 starboard holding tank of the barge. After the remaining cargo and oily water was transferred to Bouchard B-10 and both barges proceeded to the Mirant facility.

Between 22,000 and 98,000 gallons of the No. 6 fuel oil cargo was released into Buzzards Bay on April 27, 2003. The actual amount of the release is unknown, but has been estimated by various investigators who have taken into account such factors as the time of impact, water mixing, temperature, wind, current conditions, etc. In the

days following the release, the oil was driven ashore by winds and currents. Under the direction of the Unified Command, Bouchard and the response agencies undertook various on-water recovery efforts. Once oil came ashore, the responsible party, response agencies, and others implemented shoreline clean-up activities and emergency restoration efforts. Ultimately, oil impacted approximately 100 miles of shoreline in Massachusetts and Rhode Island to varying degrees. Immediately following the spill, the Massachusetts Division of Marine Fisheries closed approximately 177,000 acres of state shellfish beds and the closures remained in effect for varying amounts of time. Coordinated wildlife collection and reconnaissance efforts, the primary purpose of which was to collect live and dead oiled birds, began on April 30, 2003 and continued daily through May 16, 2003. In the weeks following the spill, a total of 499 birds were collected (all 499 collected birds were not necessarily spill related), including 184 live oiled birds. Of the 184 live oiled birds, 20 were rehabilitated and returned to the wild.

Since the spill, the Trustees have initiated a number of pre-assessment data collection activities and studies. Findings demonstrate or suggest that the spill impacted the following categories of natural resources: (1) Birds and wildlife; (2) recreational use; (3) shorelines; and (4) aquatic resources.

The Trustees (cited above) are designated pursuant to the National Contingency Plan, 40 CFR 300.600 and 300.605.

The Responsible Party (RP) for this incident is Bouchard Transportation Company, Inc. (Bouchard), the owner and operator of the Bouchard B-120 barge. To date, the RP has cooperated with the Trustees in the performance and funding of response, cleanup and pre-assessment data collection activities. The RP has committed to participate in a cooperative natural resource damage assessment.

*Administrative Record:* The Trustees have established an Administrative Record (AR) in compliance with 15 CFR 990.45. The AR will include documents relied upon by the Trustees during the assessment and restoration planning activities for this incident. To date, the AR contains:

- (1) A copy of this notice;
- (2) A letter from the Trustees to Bouchard inviting the company to participate in a cooperative natural resource damage assessment;
- (3) A letter from Bouchard to the Trustees accepting the invitation to

participate in a cooperative natural resource damage assessment; and

(4) The "*Pre-Assessment Screen Data Report: Bouchard Barge No.120 Oil Spill in Buzzards Bay, Massachusetts, dated June 2005*".

The AR is on file at the NOAA Damage Assessment Center in Silver Spring, MD and may be viewed electronically by accessing the following Web site address: <http://www.darrp.noaa.gov/northeast/buzzard/index.html>.

Additionally, duplicate copies will be maintained for public review at the following locations:

Jonathan Bourne Library, 19 Sandwich Road, Bourne, MA 02532, for assistance please contact Diane Ranney, Assistant Library Director at 508-759-0644; and New Bedford Public Library, 613 Pleasant Street, New Bedford, MA 2740-6203, for assistance please contact Teresa Coish, Library Director at 508-991-6279.

#### Trustees' Determination of Jurisdiction

Following notice of the spill, the Trustees initiated pre-assessment data collection activities, as described in the "*Pre-Assessment Screen Data Report: Bouchard Barge No. 120 Oil Spill in Buzzards Bay, Massachusetts, dated June 2005*". The following determinations were made as required by 15 CFR 990.41:

(1) The spill of between 22,000 and 98,000 gallons of No. 6 fuel oil from the Bouchard B-120 into Buzzards Bay that occurred on April 27, 2003 was an incident as defined at 15 CFR 990.30.

(2) The incident was not permitted under Federal, state, or local law; it did not occur from a public vessel; and it did not occur from an offshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651, *et seq.*

(3) The Trustees have reviewed information gathered during the response and pre-assessment phases of this incident and determined that natural resources under the trusteeship of NOAA, DOI, MA EOEA and RIDEM have been injured as a result of the incident. The discharged oil contained components that are toxic at certain exposure levels to aquatic organisms, birds, wildlife, and vegetation. In addition, the physical characteristics of the oil adversely impacted certain natural resources. The Trustees observed birds, shoreline and aquatic organisms that were exposed to oil from the discharge. Significant portions of shellfish beds in the Commonwealth of Massachusetts were closed immediately following the spill and remained closed for varying amounts of time. Some shoreline recreational areas in

Massachusetts and Rhode Island were also closed to public access following the spill. Additional recreational resources were degraded and/or displaced following the incident.

Based upon the above findings, the Trustees have determined that they have jurisdiction to pursue restoration planning activities pursuant to the Oil Pollution Act of 1990, 33 U.S.C. 2702 and 2706(b)-(c).

*Trustees' Determination to Conduct Restoration Activities:* For the reasons discussed below, the Trustees have made the determination required by 15 CFR 990.42(a) and are proceeding with restoration planning to develop restoration alternatives that will restore, replace, rehabilitate, or acquire the equivalent of, the natural resources and/or natural resource services lost as a result of this incident.

(1) Injuries have resulted from the incident. The Trustees base this determination upon data collected and analyzed pursuant to 15 CFR 990.43 demonstrating that injuries are likely to have resulted from the incident, and include but are not limited to, the following natural resource categories: Birds and Wildlife; Shoreline; Recreational Use; and, Aquatic.

(2) Response actions have not adequately addressed the injuries resulting from the incident. Although response actions and innovative emergency restoration actions were initiated promptly, the nature of the discharge, weather and tide conditions, and the sensitivity of the environment precluded the prevention of injuries to some natural resources. It is anticipated that injured natural resources will eventually return to baseline levels, but there is a potential for significant interim losses to have occurred and to continue to occur, until return to baseline is achieved.

(3) Feasible primary and compensatory restoration alternatives exist to address injuries from this incident. Components of the restoration plan may include, but are not limited to, projects involving land acquisition, shoreline stabilization, wetland/marsh enhancement, predator control activities, protection or enhancement of bird nesting areas, and recreational area enhancements.

*Public Involvement:* Pursuant to 15 CFR 990.44, the Trustees will seek public involvement in restoration planning by establishing public review and comment opportunities.

Dated: July 21, 2006.

**Ken Barton,**

*Acting Director, Office of Response and Restoration, National Ocean Service, National Oceanic and Atmospheric Administration.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 071406G]

#### Fisheries in the Western Pacific; American Samoa Longline Limited Entry Program

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

**ACTION:** Notice; availability of permit upgrades.

**SUMMARY:** NMFS is soliciting applications for permit upgrades in the American Samoa longline limited entry program. Eight upgrade permits will be available in 2006 for holders of Class A vessel permits (i.e., less than or equal to 40 ft or 12.2 m in length) to upgrade to permits for larger vessels (Class B-1, C-1, or D-1). The upgrade permits are available only to Class A permit holders who participated in the fishery before March 22, 2002. The highest priority for receiving an upgrade permit will be given to the person with the earliest date of documented participation.

**DATES:** Completed applications for permit upgrades must be received by NMFS by September 26, 2006.

**ADDRESSES:** Completed applications should be sent to NMFS Pacific Islands Region, Attn: ASLE Permit Upgrade, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700.

Application forms may be obtained from NMFS Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814-4700, or the NMFS Pacific Islands Region website: <http://swr.nmfs.noaa.gov/pir/>.

**FOR FURTHER INFORMATION CONTACT:** Walter Ikehara, NMFS Pacific Islands Region, (808) 944-2275.

**SUPPLEMENTARY INFORMATION:** On May 25, 2005, NMFS published a final rule (70 FR 29646) that established a limited entry program for the pelagic longline fishery based in American Samoa, under Amendment 11 to the Fishery Management Plan for Pelagic Fisheries in the Western Pacific Region. American Samoa longline limited entry permits

were established for four vessel size classes, based on length, as follows:

1. Class A – less than or equal to 40 ft (12.2 m);
2. Class B (and B-1) – over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive;
3. Class C (and C-1) – over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and
4. Class D (and D-1) – over 70 ft (21.3 m).

A total of 60 initial American Samoa longline limited entry permits were issued, 22 in Class A, five in Class B, 12 in Class C, and 21 in Class D. These numbers are the limits on the number of allowed American Samoa longline limited entry permits for each size class, as defined by the regulations setting the maximum limit on permits under the limited entry program (50 CFR 665.36(f)).

The limited entry program allows for 26 upgrade permits to be made available for the exclusive use of permit holders in Class A, distributed over a four-year period following the issuance of initial limited entry permits. In 2006, eight upgrade permits will be available (four in Class B-1, two in Class C-1, and two in Class D-1). The Regional Administrator may initially issue Class B-1, C-1, and D-1 upgrade permits only to holders of Class A permits who participated in the American Samoa pelagic longline fishery before March 22, 2002 (50 CFR 665.36h)). The highest priority will be given to those with the earliest date of documented participation. Those receiving upgrade permits must surrender their Class A permits, and the surrendered permits are deducted from the allowed Class A permit total.

This notice is intended to announce the availability of permit upgrades and to solicit applications for the upgrades. Complete applications must include the completed and signed application form (available from NMFS, see **ADDRESSES**), legible copies of documents supporting historical participation in the American Samoa pelagic longline fishery, and payment for the non-refundable application processing fee. Documents supporting participation should show that fishing was conducted using longline gear. Properly completed applications must be received by NMFS (see **ADDRESSES**) by September 26, 2006 to be considered for eligibility for the 2006 permit upgrades.

Authoritative information on the American Samoa limited entry program may be found in the 50 CFR Part 665.

**Authority:** 16 U.S.C. 1801 *et seq.*