

was a deliberate process that took more than a year to complete and ensures that the DGN is operating consistent with the requirements of the ESA and the MMPA.

Comment 20: Commenters stated that criterion 1 is not appropriate criteria to use for fin whales; therefore, it is improper to make a negligible impact determination under criterion 1 and that NMFS must move to perform analysis under criterion 2.

Response: NMFS disagrees. In applying the 1999 criteria, NMFS uses criterion 1 as the starting point for the analyses. If this criterion is satisfied, the analysis would be concluded. If criterion 1 is not satisfied, NMFS may use one of the other criteria, as appropriate. Total human-caused mortality of this stock of fin whales does not exceed the threshold, and, as noted earlier (see History of Applying Negligible Impact in Fisheries and Current Negligible Impact Determination), there are other factors (e.g., recovery factor in the PBR calculation and the trend in abundance of the stock) supporting the use of criterion 1.

Comment 21: Commenters stated that criterion 1 is not appropriate to use for humpback whales; therefore it is improper to find under criterion 1. Commenters questioned whether a finding under criterion 3 was appropriate because of "certainty of data." Criterion 3 should be applied in a conservative manner, and NMFS should not overlook significant sources of uncertainty (human-cause injury and mortality). NMFS' declaration that mortality and serious injury caused by Category I and II fisheries will not delay recovery time by more than 10 percent is irrelevant, as criterion 3 looks to "total fisheries-related serious injuries and mortalities."

Response: NMFS applied criterion 3, not criterion 1, to assess the total fisheries-related serious injury and mortality to the humpback whale and adjusted the Negligible Impact Determination accordingly. Criterion 3 is appropriate when the affected population is stable or increasing and human-caused mortality is above 10 percent of PBR but less than PBR. These conditions were satisfied in this case; therefore, criterion 3 was appropriate.

Comment 22: Commenters remarked that with regard to the fin whale, under criterion 2, non-fisheries related mortality must have already been addressed with specific "management measures," before a permit can be issued.

Response: As noted earlier (see History of Applying Negligible Impact

in Fisheries), criterion 1 is the starting point for negligible impact analyses, and the others are used only if this criterion is not satisfied. In this case, criterion 1 was satisfied (human-caused mortality did not exceed 10 percent of PBR); therefore, NMFS did not use criterion 2, which is premised on total human-caused mortality exceeding 10 percent of PBR.

Comment 23: Commenters stated that management measures do not exist or are not intended to address the mortality of these three species. Pingers are not effective in preventing mysticete entanglements and have not been proven effective and/or the effectiveness of pingers is not well understood for sperm whales.

Response: NMFS disagrees that management measures are not in place to address the mortality of these three species. The POCTRP contains many regulatory and non-regulatory measures designed to reduced mortality and serious injury of marine mammals. Since implementation of the POCTRP, mortality and serious injury of marine mammals incidental to the gillnet fishery are lower than in years prior to the POCTRP.

Comment 24: One commenter noted that there was no plan to reduce ship strikes on the west coast.

Response: NMFS Southwest Regional Office is working with the U.S. Coast Guard to develop a system to report sightings and location of marine mammals, large cetaceans in particular, and notify mariners of the presence and location of such marine mammals.

Comment 25: One commenter stated that ship-related deaths of large cetaceans go largely undetected in the absence of thorough necropsies of dead stranded animals. Dead or stranded humpback whales are not routinely necropsied throughout the range of this stock.

Response: NMFS acknowledges that there are uncertainties in assigning cause of death in many stranded marine mammals, generally due to decomposition of tissues and that necropsies are an important tool in helping to determine cause of death. Members of the marine mammal stranding network perform necropsies on marine mammals throughout the west coast region, when possible.

Comment 26: One commenter stated that just because enforcement was lax enough that a take occurred in an illegal net, this does not obviate risk to species.

Response: NMFS considered all mortality and serious injury, including the incident noted in this comment (the humpback whale was incidentally taken, but released alive and uninjured

in 2004), in the current negligible impact determinations for the fin, sperm, and humpback whales. NMFS forwarded the incident in question to the Southwest Region's Office of Law Enforcement.

Comment 27: Commenters expressed that issuance of the proposed permit would violate two requirements of the National Marine Sanctuaries Act: to avoid injury to Sanctuary resources and to consult with the National Ocean Service about potential effects on Sanctuary resources. The fishery overlaps the boundaries of three national marine sanctuaries. The fin, humpback, and sperm whales are all resources protected by these sanctuary designations. Fishing under the proposed permit would clearly "destroy, cause the loss, or injure" these resources.

Response: The fishery overlaps four sanctuaries. NMFS consults with staff in the affected sanctuaries to ensure fishery operations are consistent with all relevant statutory and regulatory provisions.

Dated: October 23, 2007.

Helen M. Golde,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD61

Marine Mammals; File No. 10080

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Dr. Kathryn A. Ono, Department of Biological Sciences, University of New England, Biddeford, ME, has applied in due form for a permit to conduct research on marine mammals.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 26, 2007.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9300; fax (978)281–9394.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 10080.

FOR FURTHER INFORMATION CONTACT:

Tammy Adams or Jaclyn Daly, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a 5-year permit to examine expanding populations of the Western North Atlantic stocks of harbor seals (*Phoca vitulina concolor*) and grey seals (*Halichoerus grypus*) in the Gulf of Maine. The objectives of the study are to assess the state of harbor seal population health; determine movement and diving patterns of weaned harbor seal pups; compare disease loads, survival, and behavior of rehabilitated harbor seal pups with wild pups; and assess behavior, population dynamics, and health of grey seals. The research would involve capture of up to 200 harbor seals and 500 grey seals annually for attachment of flipper tags, physical examinations, and tissue sampling to assess health, behavior, and population dynamics. Up to 10 of the 400 harbor seals captured annually would have satellite tags attached for recording data on movement and dive patterns. An additional 100 grey seals annually may be remotely marked with paint or hair dye to facilitate behavioral observations. Up to 400 harbor seals, 2500 grey seals, 150 harp seals (*Pagophilus*

groenlandicus), and 150 hooded seals (*Cystophora cristata*) may be harassed annually incidental to capture and sampling. The applicant has requested authorization for the unintentional research related mortality of up to 2 harbor seals and 4 grey seals annually.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), NMFS has initially determined that issuance of the proposed permit is consistent with a category of activities identified in NOAA Administrative Order 216–6 that do not individually or cumulatively have the potential to pose significant impacts on the quality of the human environment and are therefore exempted from further environmental review and requirements to prepare environmental review documents.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: October 23, 2007.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD35

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to a U.S. Navy Shock Trial

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

ACTION: Notice; receipt of application for implementation of regulations and a letter of authorization; request for comments and information.

SUMMARY: NMFS has received a request from the U.S. Navy (Navy) for implementation of regulations and an authorization for the taking of marine mammals incidental to conducting a Full Ship Shock Trial (FSST) of the MESA VERDE (LPD–19) in the offshore waters of the Atlantic Ocean off Mayport, FL. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of

marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

DATES: Comments and information must be received no later than November 26, 2007.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.XD35@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

A copy of the Navy's application may be obtained by writing to the address specified above (See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

FOR FURTHER INFORMATION CONTACT: Ken Hollingshead, Office of Protected Resources, NMFS, (301) 713–2289, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct 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) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings will be granted if NMFS finds that the taking will have a negligible impact on the affected species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses, and if the permissible methods of taking and the requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined “negligible impact” in 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.