

has made clear that the action of the Omnibus Amendment will be confined to a description of process and the preparation of an EIS no longer appears to be necessary. Rather, the Council will develop an EA; if, during the development of the EA or at such time that the analysis indicates a Finding of No Significant Impact (FONSI) statement cannot be supported, the Council will re-initiate development of an EIS. A public hearing draft of the Omnibus Amendment is expected to be available mid-2010, and the Council will conduct several public hearings on the draft once it is completed.

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

Dated: March 5, 2010.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.*

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**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XU93

#### Notice of Intent to Prepare an Environmental Assessment for a Proposed Rule to Revise Marine Mammal Special Exception Permit Requirements

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

**ACTION:** Notice of Intent to prepare environmental assessment.

**SUMMARY:** The National Marine Fisheries Service (NMFS) announces its intent to prepare an Environmental Assessment (EA) to analyze the potential environmental impacts of a proposed rule to revise Federal regulations implementing the Section 104 permit provisions of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*). NMFS proposes changes to the regulations to clarify existing permitting procedures and to codify procedures currently being implemented through agency policy. By this notice, NMFS requests public participation in the scoping process that will help identify alternatives and determine the scope of environmental issues to be addressed in the EA. This notice also provides information on how to participate in the scoping process.

**ADDRESSES:** Written comments must be postmarked by May 10, 2010, and should be mailed to: P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910-3226. Comments may also be submitted by facsimile to (301)713-0376, or by email to [mmpermitregs.comments@noaa.gov](mailto:mmpermitregs.comments@noaa.gov). Please include "Permit Regulations NOI" in the subject line of the email. The facsimile must be confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

**FOR FURTHER INFORMATION CONTACT:**

Amy Sloan or Jennifer Skidmore, (301)713-2289.

**SUPPLEMENTARY INFORMATION:** NMFS is the Federal agency responsible for management of cetaceans and pinnipeds, except walrus. NMFS Office of Protected Resources administers a program that issues permits to various individuals and institutions to take marine mammals in lands and waters under U.S. jurisdiction, and to U.S. citizens operating in international waters. These permits are issued pursuant to the provisions of the MMPA and NMFS regulations governing the taking and importing of marine mammals (50 CFR part 216), and in accordance with agency policy. For threatened and endangered marine mammal species, permits are also governed by the requirements of the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

Permits provide an exemption to the statutory take prohibitions to facilitate bona fide scientific research or enhance the survival and propagation of marine mammals, and to allow for import, public display, and commercial and educational photography of marine mammals as provided for in the MMPA. The MMPA and the ESA prohibit "takes" of marine mammals, and threatened and endangered species, respectively. Under the MMPA, "take" is defined as "harass, hunt, capture, collect or kill, or attempt to harass, hunt, capture, collect or kill any marine mammal." The ESA defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." The MMPA further defines two levels of harassment. Level A harassment includes actions with a potential to injure a marine mammal or marine mammal stock in the wild. Level B harassment includes actions with a potential to disturb a marine mammal or marine mammal stock in the wild by

causing disruption of behavioral patterns.

Many activities, including photography, aerial and vessel-based surveys, tagging and marking procedures, attachment of scientific instruments, and collection of tissue samples require closely approaching or capturing animals and may result in harassment or other acts prohibited under the MMPA and ESA except where allowed by permit.

The statutory requirements for permits to allow import, public display, research, enhancement, and commercial and educational photography on marine mammals are described in Section 104 of the MMPA. Section 10 of the ESA describes the requirements for permits for scientific purposes or to enhance the propagation or survival of listed species. In addition to the requirements of section 10 of the ESA, NMFS must comply with section 7 of the ESA in issuing permits. According to Section 7 of the ESA, NMFS must ensure that any action it authorizes (such as by permit) is not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. Information requested of permit applicants is used to evaluate compliance with issuance criteria and in analyses of environmental impacts required under Section 7 of the ESA and by the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*).

NMFS issuance of permits is governed by the procedural requirements of NEPA and the Administrative Procedure Act (APA; 5 U.S.C. 551 *et seq.*). NEPA requires Federal agencies to integrate environmental values into their decision making process by considering the environmental impacts of their proposed actions, such as permit issuance, and reasonable alternatives to those actions. The APA governs procedures related to imposition of permit sanctions, and requirements for NMFS to maintain records related to determinations on applications.

In 2007, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) (72 FR 52339; Sep. 13, 2007) soliciting comments from the public regarding changes being considered to the NMFS permit regulations, including criteria for issuance of scientific research and enhancement permits. NMFS sought public comment to inform efforts to further streamline and clarify general permitting requirements, simplify procedures for transferring marine mammal parts for research, consider application of the General Authorization to research involving level A harassment for non-ESA listed species,

and develop a cycle for submission and processing of applications for permits.

Some commenters indicated that the ANPR was too general to allow for meaningful comment. Others provided suggestions for modifications or expressed support for or opposition to changes proposed in the ANPR. Based on comments received, and an internal scoping process, NMFS has developed more specific proposed revisions, additions, and restructuring to form the basis of one or more alternatives to be evaluated in an EA for a Proposed Rule to revise NMFS marine mammal permit application procedures and permit requirements. This internal scoping summary document contains proposed regulatory language but does not represent a preferred alternative. Rather, it indicates where NMFS believes changes to the permit regulations are needed. The internal scoping summary document and comments on the ANPR are available at [https://www.nmfs.noaa.gov/pr/permits/mmpa\\_regulations.htm](https://www.nmfs.noaa.gov/pr/permits/mmpa_regulations.htm).

NMFS is preparing an EA to evaluate the potential environmental impacts of promulgating revised regulations governing permit application submission, review, and decision procedures including issuance criteria, penalties and permit sanctions, and permit conditions related to reporting, permit modifications, and restrictions. The purpose of the proposed revisions to the regulations is to improve their utility by clarifying, reorganizing, and updating the regulatory language. These improvements are needed to enhance readability, compliance, and enforcement.

This notice initiates a public scoping period that will inform the structure of alternatives and relevant information considered in the EA. The number and structure of the alternatives analyzed in the EA will be determined based on information gathered during scoping. NMFS is seeking public comments on the following:

(1) *New and revised definitions.*

NMFS is considering a number of new definitions and revision of some existing definitions to clarify terms related to permit application submission, review, and decision procedures and permit terms and conditions.

(2) *Restructuring and re-ordering some sections.* NMFS is considering consolidating some sections of Subparts B (Prohibitions), C (General Exceptions), and D (Special Exceptions) of the regulations, reordering the regulations to parallel the structure of the MMPA, and adding sections on the Marine Mammal Inventory, public display, and

photography permits. For example, NMFS proposes consolidation of all marine mammal parts collection and transfer regulations into sections within subpart C, rather than the current distribution across multiple subparts.

(3) *Revisions and additions to application and permit requirements.* NMFS is considering substantial revisions and additions to the sections specific to permits for scientific research and enhancement, commercial and educational photography, and public display. For example, NMFS proposes insertions describing permit requirements for educational and commercial photography, which do not have specific regulations and are currently processed according to regulations for scientific research and enhancement.

(4) *Factors to consider in evaluating significance of impacts.* NMFS seeks comment from persons affected by or otherwise interested in the marine mammal permitting process related to how proposed regulatory changes may affect marine mammals and their environment, as well as on potential impacts on the regulated public.

NMFS will consider all comments received during the comment period. All hardcopy submissions must be unbound, on paper no larger than 8 1/2 by 11 inches (216 by 279 mm), and suitable for copying and electronic scanning. NMFS requests that you include in your comments: (1) Your name and address; and (2) Any background documents to support your comments, as you feel necessary. A draft EA will be made available for public review concurrent with publication of a notice of proposed rulemaking.

Dated: March 4, 2010.

**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-XR52**

#### Marine Mammals; File No. 14534

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

**ACTION:** Notice; receipt of amended application.

**SUMMARY:** Notice is hereby given that Ned Cyr, Director, NOAA Office of Science and Technology, Silver Spring, MD, has submitted a revised application for a permit to conduct research on marine mammals in the Pacific Ocean.

**DATES:** Written, telefaxed, or e-mail comments must be received on or before April 9, 2010.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 14534 from the list of available applications.

These documents are also available 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) 713-0376; and Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018.

Written comments on this application should be submitted to the Chief, Permits, Conservation and Education Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713-0376, or by e-mail to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Please include the File No. in the subject line of the e-mail comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits, Conservation and Education Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Carrie Hubard, (301) 713-2289.

**SUPPLEMENTARY INFORMATION:** On September 11, 2009, notice was published (74 FR 46745) of a request for a permit under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222-226).

The original application is a request for a five-year permit to conduct a research program involving studies of sound production, diving and other