

### Endangered Species Act (ESA)

For the reasons already described in this **Federal Register** Notice, NMFS has determined that the described proposed construction activities and the accompanying IHA are not anticipated to have the potential to adversely affect species under NMFS jurisdiction and protected by the ESA. Consequently, NMFS has determined that a Section 7 consultation is not required. The northern fur seal, which is the only species of marine mammal under NMFS jurisdiction likely to occur in the proposed action area, is not listed under the ESA.

### National Environmental Policy Act (NEPA)

With its complete application, NMFS AKR prepared a draft final Environmental Assessment for Issuance of an Incidental Harassment Authorization for Replacement and Repair of Northern Fur Seal Observation Towers and Walkways on St. Paul Island, Alaska, which analyzed the direct, indirect and cumulative environmental impacts of the proposed specified activities on marine mammals including those listed as threatened or endangered under the ESA. Prior to making a final decision on the IHA application, NMFS will either prepare an independent EA, or after review and evaluation of NMFS AKR EA for consistency with regulations published by the Council on Environmental Quality (CEQ) and NOAA Administrative Order 216-6, Environmental Review Procedures for Implementing NEPA, adopt the NMFS AKR EA and make a decision of whether or not to issue a Finding of No Significant Impact (FONSI). A copy of the draft final EA will be available upon request (see **ADDRESSES**).

### Preliminary Determinations

Based on NMFS AKR's application, as well as the analysis contained herein, NMFS has preliminarily determined that the impact of the described replacement and repair operations will result, at most, in a temporary modification in behavior by small numbers of northern fur seals. The effect of the proposed construction activities is expected to be limited to short-term and localized behavioral changes.

Due to the infrequency, short time-frame, and localized nature of these activities, the number of marine mammals, relative to the population size, potentially taken by harassment is expected to be small. In addition, no take by injury (Level A harassment), serious injury, and/or death is

anticipated or authorized, and take by Level B harassment will be at the lowest level practicable due to incorporation of the proposed monitoring and mitigation measures mentioned previously in this document. NMFS has further preliminarily determined that the anticipated takes will have a negligible impact on the affected species or stock of marine mammals. Also, the proposed construction project is not expected to result in an unmitigable adverse impact on subsistence uses of this species.

### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to NMFS AKR for the harassment of small numbers (based on populations of the species and stock) of northern fur seals incidental to construction operations on St. Paul Island, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: March 2, 2010.

**James H. Lecky,**

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

[FR Doc. 2010-5012 Filed 3-9-10; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XU91**

### Mid-Atlantic Fishery Management Council; Atlantic Mackerel, Butterfish, Atlantic Bluefish, Spiny Dogfish, Summer Flounder, Scup, Black Sea Bass, Tilefish, Surfclam, and Ocean Quahog Annual Catch Limits and Accountability Measures Omnibus Amendment

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

**ACTION:** Supplemental Notice of Intent to prepare an environmental assessment (EA); request for comments.

**SUMMARY:** The Mid-Atlantic Fishery Management Council (Council) announces its intention to prepare, in cooperation with NMFS, an EA in accordance with the National Environmental Policy Act (NEPA) to assess potential effects on the human environment of alternative measures to address the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements for annual catch limits (ACLs) and accountability measures (AMs) in an

Omnibus Amendment to the fishery management plans (FMPs) for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs.

This supplemental notice is to alert the interested public of the Council's intent to change the level of NEPA analysis from an Environmental Impact Statement (EIS) to an EA. In addition, this supplement announces an opportunity for the public to comment on the change.

**DATES:** Written comments must be received on or before 5 p.m., EST, on March 25, 2010.

**ADDRESSES:** Written comments may be sent by any of the following methods:

- E-mail to the following address: [0648-XU91@noaa.gov](mailto:0648-XU91@noaa.gov);
- Mail or hand deliver to Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. Mark the outside of the envelope "Omnibus Amendment: National Standard 1 Requirements Comments"; or
- Fax to (302) 674-5399.

Questions about this action may be directed to the Council office at the previously provided address, or by request to the Council by telephone (302) 674-2331.

**FOR FURTHER INFORMATION CONTACT:** Mr. Daniel T. Furlong, Mid-Atlantic Fishery Management Council, Room 800 North State Street, Suite 201, Dover, DE 19901, (telephone 302-674-2331).

**SUPPLEMENTARY INFORMATION:** On March 24, 2009, the Council announced its intention to prepare, in cooperation with NMFS, an EIS in accordance with NEPA to assess potential effects on the human environment of alternative measures to address the new Magnuson-Stevens Act requirements for ACLs and AMs (74 FR 12314). The Council has been in the process of developing an Omnibus Amendment to the FMPs for Atlantic mackerel, butterfish, Atlantic bluefish, spiny dogfish, summer flounder, scup, black sea bass, tilefish, surfclams, and ocean quahogs to address ACL and AM requirements since 2008.

During the development that has occurred to date for the Omnibus Amendment, three public scoping hearings have been conducted, and the Council has conducted numerous Fishery Management Action Team (FMAT) Omnibus Amendment Committee, and full Council meetings, wherein approaches and potential alternatives have been discussed. These discussions have included public participation. The development process

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.*

[FR Doc. 2010-5183 Filed 3-9-10; 8:45 am]

**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,