

will then review a re-run of the 2009 gag update assessment with a corrected size distribution for the recreational discard data and commercial discard estimates based on observer data. The Committee will also review the impact of applying observer based discard estimates on the 2009 red grouper update assessment. The Committee will then review the following assessments: Greater amberjack update assessment, SEDAR 15 mutton snapper benchmark assessment, and SEDAR 23 goliath grouper benchmark assessment.

Copies of the agenda and other related materials can be obtained by calling (813) 348-1630 or can be downloaded from the Council's ftp site, <ftp.gulfcouncil.org>.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (*see ADDRESSES*) at least 5 working days prior to the meeting.

Dated: December 23, 2010.

**Tracey L. Thompson,**

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

[FR Doc. 2010-32737 Filed 12-28-10; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA107**

#### New England Fishery Management Council; Public Meeting; Correction

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

**ACTION:** Notice of a correction to a public meeting.

**SUMMARY:** The New England Fishery Management Council's (Council) Herring Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

**DATES:** The meeting will be held on Thursday, January 20, 2011 at 9 a.m.

**ADDRESSES:** The meeting will be held at the Clarion Hotel, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774-5611; fax: (207) 871-0510.

*Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:** The original notice published in the **Federal Register** on December 23, 2010 (75 FR 80796). The notice is being republished in its entirety.

The items of discussion in the committee's agenda are as follows:

1. The Herring Oversight Committee will continue development of catch monitoring alternatives for inclusion in Amendment 5 to the Atlantic Herring Fishery Management Plan (FMP); alternatives include management measures to:

- Adjust the fishery management program (administrative provisions, carrier vessels, transfers at sea, notification requirements, quota monitoring, reporting, and permit provisions);

- Address at-sea monitoring, observer coverage levels, address maximized retention, and maximize sampling and address net slippage;

- Address portside sampling, portside sampling program design, and measures to verify self-reported landings;

2. They will continue development of management measures and alternatives to address river herring bycatch for consideration in Amendment 5; alternatives may include identification of river herring hotspots, management alternatives to apply to those hotspots (monitoring, avoidance, protection), and/or catch caps for river herring;

3. Also on the agenda is to review/discuss available information regarding the development of management measures to protect spawning fish in Amendment 5, develop Committee recommendations;

4. They will also discuss development of alternatives to address midwater trawl vessel access to groundfish closed areas;

5. The Committee will develop recommendations for Council consideration regarding all of the management alternatives for inclusion in Amendment 5 Draft EIS (catch monitoring program, measures to address river herring bycatch, access to groundfish closed areas, protection of spawning fish); and

6. Given time other business will be discussed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see ADDRESSES*) at least 5 days prior to the meeting date.

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

Dated: December 23, 2010.

**Tracey L. Thompson,**

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

[FR Doc. 2010-32793 Filed 12-28-10; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XZ23**

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

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

**ACTION:** Notice.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), NMFS hereby issues a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals from six marine mammal stocks listed under the Endangered Species Act (ESA) by participants in several groundfish

fisheries in the Bering Sea and the Gulf of Alaska. This authorization is based on determinations that mortality and serious injury of endangered stocks of Central North Pacific (CNP) humpback whales, Western North Pacific (WNP) stock of humpback whales, Northeast Pacific (NEP) stock of fin whales, North Pacific stock of sperm whales, and Western U.S. stock of Steller sea lions; and on the threatened Eastern U.S. stock of Steller sea lions incidental to commercial fishing will have a negligible impact on these stocks, that recovery plans have been developed or are being prepared, that a monitoring program is established, and that vessels in the fisheries are registered. Take Reduction Plans (TRPs) are not required for the NEP stock of fin whales or the Eastern U.S. stock of Steller sea lions because mortality and serious injury of these stocks incidental to commercial fishing operations are at insignificant levels approaching a zero mortality and serious injury rate; TRPs for other species will be deferred as sufficient funding is not available at this time.

**DATES:** This permit is effective for a three-year period beginning January 1, 2011.

**ADDRESSES:** Reference material for this permit is available on the Internet at the following address: <http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>. Recovery plans for these species are available on the Internet at the following address: <http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals>.

Copies of the reference materials may also be obtained from the Protected Resources Division, NMFS, Alaska Region, Protected Resources Division, P.O. Box 21668, Juneau, AK 99802. Attention—Kaja Brix, Assistant Regional Administrator.

**FOR FURTHER INFORMATION CONTACT:** Dana J. Seagars, Alaska Regional Office, (907) 271-5005, or Tom Eagle, Office of Protected Resources, (301) 713-2322, ext. 105.

**SUPPLEMENTARY INFORMATION:**

**Background**

MMPA section 101(a)(5)(E) requires NMFS to allow the taking of marine mammals from species or stocks listed as threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*) incidental to 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 take reduction plan has been developed or is being developed for such species or stock.

On November 9, 2010 (75 FR 68767), NMFS proposed to issue a permit to incidentally take certain ESA listed marine mammal stocks by vessels registered in the following Federal and State-parallel Category II groundfish fisheries: The AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Island pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries. NMFS is now issuing a 3-year permit to participants in the above fisheries under MMPA section 101(a)(5)(E) for the incidental taking of five marine mammal stocks listed as: Endangered under the ESA—the CNP stock of humpback whales, the WNP stock of humpback whales, the NEP stock of fin whales, the North Pacific stock of sperm whales, and the Western U.S. stock of Steller sea lions, and from one stock listed as threatened—the Eastern U.S. stock of Steller sea lions.

Taking of individuals from these threatened or endangered stocks of marine mammals would be authorized only in the fisheries identified in Table 1; no other Alaska-based groundfish fisheries are known to take these or other species or stocks of threatened or endangered marine mammals. There are no Category I fisheries designated in Alaska. Participants in the seven Category III fisheries identified in this notice (Table 1) are not required to obtain such incidental take permits but are required to report injuries or mortalities of marine mammals incidental to their operations for the taking to be authorized after a Negligible Impact Determination (NID) has been made. State-parallel groundfish fisheries are included in this proposed permit. NMFS will consider issuing permits at a future date for the taking of the subject threatened or endangered species by participants in State-managed fisheries other than the State-parallel groundfish fisheries. The data for considering these authorizations were reviewed coincident with the 2011 MMPA List of Fisheries (LOF) (75 FR November 8, 2010), the draft 2010 marine mammal stock assessment reports (dSAR) (Allen and Angliss 2010), and other relevant sources.

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if the mortality and serious injury incidental to commercial

fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of an NID. NMFS issued a draft NID for the proposed action (November 9, 2010: 75 FR 68767), with minor edits. NMFS now issues a final document (<http://www.alaskafisheries.noaa.gov/index/analyses/analyses.asp>).

**Determinations for the Permit**

The following determinations and supporting information were included in notice of the proposed permit (75 FR 68767, November 9, 2010).

*Negligible Impact*

NMFS previously issued an NID for CNP humpback whales (75 FR 29984, May 28, 2010) addressing taking in both Alaska and Hawaiian waters; the conclusions reached in that document remain valid. In addition, relevant information was reviewed in the NID issued for this permit. Based on that review NMFS has estimated that mortality and serious injury of CNP humpback whales incidental to commercial fishing operations in HI and AK totals 3.8 whales per year, which is 6.2 percent of the stock's Potential Biological Removal (PBR) level. NMFS concludes that incidental mortality and serious injury at this total rate will have a negligible impact on CNP humpback whales. Although humpback whales are taken incidental to fisheries in Hawaiian and Alaskan waters, this permit is limited to the Alaska-based fisheries because such taking was previously permitted for the Hawaii-based fisheries (75 FR 29984, May 28, 2010).

NMFS estimated that mortality and serious injury of WNP humpback whales incidental to commercial fishing operations in AK at 0.2 whales per year, which is 10.0 percent of the stock's PBR level. NMFS concludes that incidental mortality and serious injury at this total rate will have a negligible impact on WNP humpback whales.

NMFS estimated that mortality and serious injury of NEP fin whales incidental to commercial fishing operations in AK at 0.23 whales per year and 0.20 whales per year due to ship strikes. Thus the total annual human-related mortality of NEP fin whales is 0.43 whales per year which is less than 10.0 percent of the stock's PBR level. NMFS concluded that incidental mortality and serious injury at this total rate will have a negligible impact on NEP fin whales.

While reliable estimates for the abundance and trends of sperm whales are not currently available, NMFS assessed the impact of the incidental

take by first determining the estimated annual mortality of sperm whales (3.5 whales per year in AK plus 0.2 whales per year in CA/OR/WA for a total of 3.7 whales per year) in commercial fisheries and then re-arranging the formula used to calculate PBR to estimate the number of sperm whales that would be required for 3.7 animals to be 10 percent of the stock's PBR (taking at or below this would be considered negligible). Solving for the minimum abundance estimate gives a minimum abundance of 18,500 sperm whales. Because the best estimate of sperm whale abundance in the North Pacific (39,200) is far greater than this calculated threshold minimum abundance, the NMFS concludes that the current level of human-caused mortality and serious injury is less than 10 percent of a PBR for sperm whales in the eastern North Pacific Ocean; therefore, such taking will have a negligible impact on the stock.

Total human related mortality and serious injury of the Western U.S. stock of Steller sea lions is estimated at 223.8 animals per year, greater than 10 percent of PBR (set at 254 animals). Following NID Criterion 3, NMFS has determined that mortality and serious injuries of Western U.S. stock Steller sea lions incidental to commercial fishing will have a negligible impact on the stock because population growth is stable or increasing at a (non-significant) 1.5 percent annual rate and the fishery-related mortalities and serious injuries (26.2) are less than PBR (254).

The minimum estimated mortality and serious injury rate incidental to commercial fisheries (both U.S. and Canadian) is 25.6 Eastern U.S. stock Steller sea lions per year. With 15.1 animals estimated taken due to other human related sources, the total human related mortality is less than 10 percent of this stock's PBR (2,378 animals). Therefore, NMFS has determined that the annual mortality and serious injury incidental to commercial fisheries will have a negligible impact on the Eastern U.S. stock of Steller sea lions.

#### *Recovery Plans*

Recovery Plans for both stocks of humpback whales and Steller sea lions have been completed. Recovery plans for fin and sperm whales have been drafted and are being completed. These draft and final recovery plans are available on the Internet (*see ADDRESSES*). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

#### *Monitoring Program*

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 Alaska groundfish 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 Alaska-based groundfish fisheries. Accordingly, vessels in the fisheries are registered in accordance with MMPA section 118 and a monitoring program is in place.

#### *Take Reduction Plans*

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 stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as threatened or endangered under the ESA. These strategic stocks interact with the Category II fisheries described above, and no TRPs have been developed for them. The short-term goal of a TRP is to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR. The short-term goal for TRPs has been realized for each of these stocks of marine mammals. The long-term goal of a TRP is to reduce incidental mortality and serious injury to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans. Development and implementation of TRPs are subject to the availability of funding. MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing and implementing TRPs.

NMFS has insufficient funding available to simultaneously develop and implement TRPs for all stocks that interact with Category I or Category II fisheries. Most recently in March 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 sections 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the WNP and CNP stocks of humpback whale, the North Pacific stock of sperm whales, and the Western U.S. stock of Steller sea lions as "low" priorities for establishing TRTs, based on population trends of each stock and mortality and serious injury

levels incidental to commercial fisheries that are below the stocks' PBRs. Accordingly, given these factors and NMFS' prioritization process, TRPs will be deferred under section 118 as other stocks have a higher priority for any available funding for establishing new TRPs.

Mortality and serious injury of Steller sea lions, Eastern U.S. stock, and NEP fin whales incidental to commercial fisheries are at an insignificant levels, approaching a zero mortality and serious injury rate (Allen and Angliss, 2010). MMPA section 118(b)(2) states that fisheries maintaining such mortality and serious injury levels are not required to further reduce their mortality and serious injury rates. Because the goals of TRPs are to reduce mortality and serious injury of marine mammals incidental to commercial fishing operations, no TRPs are required for either of these stocks.

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. Operations of the Bering Sea/Aleutian Islands, Gulf of Alaska, and Alaska State Parallel groundfish fisheries have been analyzed previously under NEPA for Federal actions authorizing the operations of the fisheries. The most recent analysis of the impacts of authorizing these fisheries on the human environment was contained in an Environmental Assessment ("Revisions to the Steller Sea Lion Protection Measures for the Aleutian Islands Atka Mackerel and Pacific Cod Fisheries," completed in November 2010). This EA, which included a finding of no significant impact on the human environment, followed a Programmatic Supplemental Environmental Impact Statement on Alaska groundfish fisheries in 2004, and an Environmental Impact Statement (EIS) on specifications for Alaska groundfish fisheries in 2007. Issuing this permit to authorize the taking of threatened or endangered species does not modify the operation of the affected fisheries nor does it alter the impact of these fisheries on the human environment. Because the effects of the fisheries have already been analyzed as noted above, no additional analyses under NEPA are required.

Section 7 of the ESA requires NMFS to consult with itself when agency actions may affect threatened or endangered marine species, including marine mammals. NMFS has evaluated the direct and indirect effects of the Alaska-based groundfish fishery in a recently issued (November 24, 2010) BiOp. NMFS reviewed this BiOp and

information related to issuing the permit and have concluded that issuing the permit would not modify the activities of the fishery nor the effects of these fishing activities on the subject ESA-listed species in a manner that would cause adverse effects not previously evaluated and that there has been no new listing of species or designation of critical habitat that could be affected by the action. Accordingly, no additional analyses under the ESA are required at this time.

**Current Permit**

NMFS has made determinations under MMPA section 101(a)(5)(E) that (1) mortality and serious injury of CNP and WNP humpback whales, NEP fin whales, North Pacific sperm whales, Western U.S. Steller sea lions, and Eastern U.S. Steller sea lions incidental to commercial fishing will have a negligible impact on these stocks, (2) recovery plans for all affected species or stocks have been completed or are currently in process, (3) as required by MMPA section 118, a monitoring program has been established for the Alaska groundfish fisheries, and vessels in the fishery are registered, and (4) NMFS has insufficient funds to complete TRPs for the two stocks of

humpback whales, for the North Pacific stock of sperm whales, and for the Western U.S. stock of Steller sea lions. Take Reduction Plans (TRPs) are not required for the NEP stock of fin whales or the Eastern U.S. stock of Steller sea lions because mortality and serious injury of these stocks incidental to commercial fishing operations are at insignificant levels approaching a zero mortality and serious injury rate.

Therefore, NMFS has determined that all the requirements have been met for issuing a permit to participants in the following Federally-authorized and State-parallel Category II groundfish fisheries: The AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Island pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries. Accordingly, NMFS issues a permit to participants in these Category II fisheries for the taking of CNP humpback whales, WNP humpback whales, NEP fin whales, North Pacific sperm whales, and Steller sea lions (Western U.S. stock and Eastern U.S. stock) incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in

Category III fishery. For incidental taking of marine mammals to be authorized in Category III fisheries, any injuries or mortalities must be reported to NMFS. If NMFS determines at a later date that incidental mortality and serious injury from commercial fishing is having more than a negligible impact on these six stocks of listed marine mammals, NMFS may use its emergency authority under MMPA section 118 to protect the stock and may modify the permit issued herein.

MMPA section 101(a)(5)(E) requires NMFS to publish in the **Federal Register** a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was published May 28, 2010 (75 FR 29984), which authorized the taking of threatened or endangered marine mammals incidental to commercial fishing in Hawaii. With issuance of the current permit, NMFS adds 4 category II fisheries (AK Bering Sea/Aleutian Islands flatfish trawl, AK Bering Sea/Aleutian Island pollock trawl, AK Bering Sea sablefish pot, and AK Bering Sea/Aleutian Islands Pacific cod longline fisheries) and seven category III Alaska fisheries to this list (Table 1).

**TABLE 1—LIST OF FISHERIES AUTHORIZED TO TAKE THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO FISHING OPERATIONS**

Fishery	Category	Marine mammal stock
HI deep-set (tuna target) longline/set line .....	I .....	Humpback whale, CNP stock.
HI shallow-set (swordfish target) longline/set line .....	II .....	Humpback whale, CNP stock.
AK Bering Sea/Aleutian Islands flatfish trawl .....	II .....	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Island pollock trawl .....	II .....	Fin whale, NEP stock.
AK Bering Sea sablefish pot .....	II .....	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Pacific cod longline fisheries .....	II .....	Humpback whale, WNP stock.
AK miscellaneous finfish set gillnet .....	III .....	Humpback whale, CNP stock.
AK Gulf of Alaska sablefish longline .....	III .....	Steller sea lion, Western stock.
AK halibut longline/set line (State and Federal waters) .....	III .....	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Atka mackerel trawl .....	III .....	Steller sea lion, Western stock.
AK Bering Sea/Aleutian Islands Pacific cod trawl .....	III .....	Steller sea lion, Western stock.
AK Gulf of Alaska Pacific cod trawl .....	III .....	Steller sea lion, Western stock.
AK Gulf of Alaska pollock trawl .....	III .....	Sperm whale, NP.
		Steller sea lion, Eastern stock.
		Steller sea lion, Western stock.
		Steller sea lion, Western stock.
		Steller sea lion, Western stock.
		Steller sea lion, Western stock.
		Fin whale, NEP stock.
		Steller sea lion, Western stock.

**Comments and Responses**

In response to the notice of proposed permit issuance (75 FR 68767, November 9, 2010), NMFS received letters containing comments from two organizations, the U.S. Marine Mammal Commission (Commission) and the Marine Conservation Alliance (MCA). Each letter contained multiple comments.

*Comment 1:* The Commission and the MCA briefly summarized NMFS'

findings for the proposed permit and recommended that NMFS comply with MMPA section 101(a)(5)(E) by issuing the permit to authorize the incidental take of endangered stocks of CNP and WNP humpback whales, ENP fin whales, NP sperm whales, Western U.S. stock of Steller sea lions, and the threatened Eastern U.S. stock of Steller sea lions.

*Response:* NMFS agrees and is issuing the permit as required by the MMPA.

*Comment 2:* The Commission recommended that NMFS emphasize research and monitoring programs to address uncertainties related to reproduction and survival of the far-western sub-populations of the Western U.S. stock of Steller sea lions and re-evaluate the negligible impact determination as new information becomes available.

*Response:* NMFS agrees additional research and monitoring programs

would clarify uncertainties and to re-evaluate the findings in this notice as new information becomes available. In particular, NMFS will incorporate an annual review of any reports of incidental mortality of the subject listed species in the fisheries addressed by this permit. Particular attention will be paid to instances of incidental take of Western stock Steller sea lions in those sub-regions experiencing continued population declines (NMFS Fishery Statistical Areas 541, 542, and 543) to ensure the level of taking remains negligible on a local scale.

*Comment 3:* The Commission recommended NMFS work with state and tribal fisheries managers and participants in those fisheries to expand observer coverage in fisheries that may take marine mammals and, as observers provide better data, re-evaluate the negligible impact determination.

*Response:* In the NID, NMFS recognized that certain fisheries may have not been observed, have been only observed for a limited number of seasons, or were covered over a decade or longer ago. NMFS agrees that there is a pressing need for new and sound data, in particular for certain fisheries known to have taken marine mammals at some previous point (e.g., Prince William Sound salmon drift gillnet fishery) and will undertake new monitoring programs as budgetary constraints and priorities allow. NMFS has also recently taken steps to expand observer coverage in previously unmonitored groundfish fisheries in nearshore areas and in smaller boat fisheries (e.g., < 60 foot vessels). However, the implementation date for such an expanded program and the initial proportion of coverage are uncertain at this time. As any new data from observer programs become available, NMFS will re-evaluate the NID for all species, as appropriate.

*Comment 4:* The Commission recommended NMFS identify information gaps related to endangered and threatened species that may be affected by the issuance of this permit and elevate the priority given to addressing those gaps, in particular to the possible affect of this action on critically endangered marine mammals such as the North Pacific right whale.

*Response:* NMFS will continue to evaluate available data such as that obtained through the existing Groundfish Fishery Observer Program that may provide information relevant to a relationship among this action, ongoing Alaska groundfish fishing activities, and critically endangered marine mammal species and stocks. Research and management programs for listed species will continue to be a high

priority for NMFS and will be expanded to the extent that future budgets allow.

*Comment 5:* In their review of the draft NID, MCA called attention to information discussed in the NID concerning possible changes in, or “blurring at the edges,” of the geographic boundary (144°W) between the Western U.S. and Eastern U.S. stocks of Steller sea lions and referred to their additional comments on that topic submitted as part of NMFS’s ongoing five-year status review of the Eastern U.S. stock.

*Response:* There is adequate information to continue to manage these stocks as defined based on extensive prior scientific review as well as new information (e.g., Phillips, C.D., J.W. Bickham, J.C. Patton, and T.S. Gelatt. 2009. Systematics of Steller sea lions (*Eumetopias jubatus*): Subspecies recognition based on concordance of genetics and morphometrics. Occas. Pap. Mus. Texas Tech Univ. 283:1–15). Additional information and a response to those comments will be forthcoming through the public review process appropriate to the five year status review.

*Comment 6:* The MCA opined the Draft NID did not incorporate the most up-to-date Western U.S. Steller sea lion population assessment data nor called attention to the relationship between current population trends and various Recovery Plan criteria, alleging the population is “on track” towards downlisting from endangered to threatened.

*Response:* NMFS has used the best available scientific information which is complete at this time for preparing and issuing the NID. Data analysis and final report preparation for population surveys of Steller sea lions conducted in 2009 and 2010 remain in process. NMFS staff conferred and reached a preliminary conclusion that these data are not likely to result in any substantial alteration of the conclusions reached in the NID. The criteria for recovery and ultimate “downlisting” of the Western U.S. stock are clearly stated in the Recovery Plan (NMFS 2008) and are based on (among a variety of factors) maintaining a statistically significant consistent but slow (e.g., 1.5 percent) increasing trend of population growth for 15 years on average. Clearly, given the lack of any long-term statistical certainty in available population assessment data as well as the disparate trends within the various sub-regions as defined in the Recovery Plan, it is premature to make a statement as to whether the population is or is not “on track” with respect to recovery and delisting; furthermore, such a determination is not relevant to the NID

process. The NID uses the appropriate criteria and utilized the best available population information to determine that the effect of authorizing the incidental take of commercial groundfish fishing will have a negligible impact on the Western U.S. population stock of Steller sea lions. In addition, whether or not the status of any of these species may change under the ESA is not relevant to the NID under the MMPA. If such a change in status occurs, NMFS would evaluate whether or not additional analyses for this permit are necessary.

*Comment 7:* The MCA inquired about how not convening a TRP might potentially affect recovery of the Western U.S. stock and whether or not funding is likely to be included in the FY2012/13 budgets.

*Response:* As discussed in the notice of the proposed permit, the current levels of incidental mortality and serious injury (without a TRP) are expected to delay recovery of the Western U.S. stock of Steller sea lions by no more than 10 percent of the time to recovery if such mortality and serious injury did not occur. However, NMFS plans, through both monitoring of this permit, and actions required through the section 7 process of the ESA—the Reasonable and Prudent Alternatives issued with the Final BiOp for the subject groundfish fisheries—to assess the level of taking and to work with industry, the North Pacific Fisheries Management Council, and other groups to ensure that any such taking remains at negligible levels. NMFS will continue to assess the need for any TRPs and associated budgetary needs within the priorities of the agency.

Dated: December 21, 2010.

**P. Michael Payne,**

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

[FR Doc. 2010–32689 Filed 12–28–10; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for a new collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* United States Patent and Trademark Office (USPTO).