

DATES: Written, telefaxed, or email comments must be received on or before August 2, 2021.

ADDRESSES: These documents are available upon written request via email to NMFS.Pr1Comments@noaa.gov.

Written comments on this application should be submitted via email to NMFS.Pr1Comments@noaa.gov. Please include File No. 25761 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to NMFS.Pr1Comments@noaa.gov. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan, Ph.D. or Sara Young, (301) 427-8401.

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 proposes to film pinnipeds in Washington for a film about the foraging and hunting behavior of harbor seals (*Phoca vitulina*). Pinnipeds may be filmed from land, an unmanned aircraft system, and underwater via a stationary camera, pole camera, or snorkelers. Up to 450 harbor seals and 90 California sea lions (*Zalophus californianus*) may be filmed annually. The permit would be valid for two years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

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

Dated: June 28, 2021.

Julia Marie Harrison,
Chief, Permits and Conservation Division,
Office of Protected Resources, National
Marine Fisheries Service.

[FR Doc. 2021-14043 Filed 6-30-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648-XB198]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Caribbean Fishery Management Council (CFMC) will hold the 174th public meeting (virtual) to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The 174th CFMC public meeting (virtual) will be held on July 21, 2021, from 9 a.m. to 4 p.m. The meeting will be at AST (U.S. Caribbean time, presently same as EST).

ADDRESSES: You may join the 174th CFMC public meeting (virtual) via Zoom, from a computer, tablet or smartphone by entering the following address:

Join Zoom Meeting: <https://us02web.zoom.us/j/83060685915?pwd=VmVsc1orSUTkck8xYk1XOXNDY1ErZz09>

Meeting ID: 830 6068 5915.

Passcode: 995658.

One tap mobile:

+17879451488,,83060685915#,,,,,0#,,

995658# Puerto Rico

+17879667727,,83060685915#,,,,,0#,,

995658# Puerto Rico

Dial by your location:

+1 787 945 1488 Puerto Rico

+1 787 966 7727 Puerto Rico

+1 939 945 0244 Puerto Rico

Meeting ID: 830 6068 5915.

Passcode: 995658.

In case there are problems and we cannot reconnect via Zoom, the meeting will continue using GoToMeeting.

You can join the meeting from your computer, tablet or smartphone. <https://global.gotomeeting.com/join/971749317>. You can also dial in using your phone. United States: +1 (408) 650-3123, Access Code: 971-749-317.

FOR FURTHER INFORMATION CONTACT:

Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918-1903, telephone: (787) 398-3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

July 21, 2021

9 a.m.–9:30 a.m.

—Call to Order

—Roll Call

—Adoption of Agenda

—Consideration of 173rd Council Meeting Verbatim Transcriptions

—Executive Director's Report

9:30 a.m.–10:30 a.m.

—Five year Strategic Plan Presentation—Dr. M. Duval

10:30 a.m.–11 a.m.

—Update on Fishery Ecosystem Plan Stakeholder Engagement Workshops—Dr. M. Duval

11 a.m.–11:30 p.m.

—SSC Report—Dr. Richard Appeldoorn

11:30 a.m.–12 p.m.

—Closed Seasons for Certain Species—Dr. Mitchell Scharer

12 p.m.–1 p.m.

—Lunch

1 p.m.–1:30 p.m.

—Draft Tech Memo on Managing with ACLs for Data-Limited Stocks.

1:30 p.m.–2 p.m.

—Enforcement Issues with Nassau Grouper and other Fish Species in St. Thomas/St. John, USVI

2 p.m.–2:30 p.m.

—DAP Chairs Report on Buoy Gear Federal Regulations

2:30 p.m.–4 p.m.

—Other Business

—Capt. Silva's Letter on Deepwater Snapper Grouper Fishery (Letter in Spanish to be Read into the Record for Translation)

—Public Comment Period (5 minutes each)

—Next Council Meetings

—Adjourn

Note (1): Other than starting time and dates of the meetings, the established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. To further accommodate discussion and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice. Changes in the agenda will be posted to the CFMC website, Facebook, Twitter and Instagram as practicable.

Note (2): Financial disclosure forms are available for inspection at this meeting, as per 50 CFR part 601.

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The

meeting will begin on July 21, 2021, at 9 a.m. AST, and will end on July 21, 2021, at 4 p.m. AST. Other than the start time on the first day of the meeting, interested parties should be aware that discussions may start earlier or later than indicated in the agenda, at the discretion of the Chair.

Special Accommodations

Simultaneous interpretation will be provided.

For simultaneous interpretation English-Spanish-English follow your Zoom screen instructions. You will be asked which language you prefer when you join the meeting.

For any additional information on this public virtual meeting, please contact Diana Martino, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 226–8849.

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

Dated: June 25, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–14005 Filed 6–30–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO–P–2021–0020]

Properly Presenting Prophetic and Working Examples in a Patent Application

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is reminding applicants that patent applications must properly present examples in a manner that clearly distinguishes between prophetic examples that describe predicted experimental results and working examples that report actual experimental results. The distinction must be clear to satisfy the written description and enablement requirements and comply with the applicant’s duty of disclosure.

FOR FURTHER INFORMATION CONTACT: Ali Salimi, Senior Legal Advisor, at 571–272–0909, and Raul Tamayo, Senior Legal Advisor, at 571–272–7728, both with the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents, USPTO.

SUPPLEMENTARY INFORMATION: The USPTO is reminding patent applicants of their duty to ensure that patent applications are written in a manner that clearly distinguishes prophetic examples with predicted experimental results from working examples with actual experimental results.

Prophetic Versus Working Examples

Prophetic examples, also called paper examples, are typically used in a patent application to describe reasonably expected future or anticipated results. Prophetic examples describe experiments that have not in fact been performed. Rather, they are presented in a manner that forecasts simulated or predicted results. In contrast, working examples correspond to work performed or experiments conducted that yielded actual results. The Manual of Patent Examining Procedure (MPEP) states that prophetic examples should not be described using the past tense. MPEP 608.01(p), subsection II. Prophetic examples may be written in future or present tense. This drafting technique assists readers in differentiating between actual working examples and prophetic examples.

Written Description and Enablement Requirements

To be complete, the contents of a patent application must include a specification containing a written description of the invention that enables any person skilled in the art or science to which the invention pertains to make and use the invention as of its filing date. *See* 35 U.S.C. 112(a). At least one specific operative embodiment or example of the invention must be set forth. The example(s) and description should be sufficient to justify the scope of the claims. MPEP 608.01(p). The specification need not contain an example if the invention is otherwise disclosed in such a manner that one skilled in the art will be able to practice it without an undue amount of experimentation. *In re Borkowski*, 422 F.2d 904, 908, 164 USPQ 642, 645 (CCPA 1970). *See* MPEP 2164.02.

The courts have sanctioned the use of prophetic examples to meet the written description and enablement requirements for a patent application. *See, e.g., Allergan, Inc. v. Sandoz Inc.*, 796 F.3d 1293, 1310 (Fed. Cir. 2015) (“efficacy data are generally not required in a patent application” and “a patentee is not required to provide actual working examples”). A patent application does not need to provide a guarantee that a prophetic example actually works. *Id.* at 1310. “Only a sufficient description enabling a person

of ordinary skill in the art to carry out an invention is needed.” *Id.* The courts have further cautioned that the presence of prophetic examples alone should not be the basis for asserting that a specification is not enabling; rather, a lack of operative embodiments and undue experimentation should be determinative. *Atlas Powder Co. v. E.I. du Pont De Nemours & Co.*, 750 F.2d 1569, 1577 (Fed. Cir. 1984).

Disclosed results of tests and examples, whether working or prophetic examples, in a patent application are not normally questioned unless there is a reasonable basis for doing so. However, when prophetic examples are described in a manner that is ambiguous or that implies that the results are actual, the adequacy and accuracy of the disclosure may come into question. If the characterization of the results, when taken in light of the disclosure as a whole, reasonably raises any questions as to whether the results from the examples are actual, the examiner will determine whether to reject the appropriate claims based on an insufficient disclosure under the enablement and/or written description requirements of 35 U.S.C. 112(a) following the guidance in MPEP 2164 and 2163, respectively. When such a rejection(s) is made, the applicant may reply with the results of an actual test or example that has been conducted, or by providing relevant arguments and/or declaration evidence that there is strong reason to believe that the result would be as predicted, being careful not to introduce new matter into the application. MPEP 707.07(l) and 2161–2164.08(c).

Applicant’s Duty of Disclosure

Care should be taken to see that inaccurate or misleading statements, inaccurate evidence, or inaccurate experiments are not introduced into the record. MPEP 2004 sets forth best practices to avoid duty of disclosure problems (*see, in particular, MPEP 2004, item 8*). As noted above, prophetic examples should not be described using the past tense. *Hoffmann-La Roche, Inc. v. Promega Corp.*, 323 F.3d 1354, 1367 (Fed. Cir. 2003) (improperly identifying a prophetic example in the past tense validly raises an inequitable conduct issue based on the intent of the inventors in drafting the example in the past tense, when the example, in fact, is prophetic). Knowingly asserting in a patent application that a certain result “was run” or an experiment “was conducted” when, in fact, the experiment was not conducted or the result was not obtained is fraud. *Apotex Inc. v. UCB, Inc.*, 763 F.3d 1354, 1362