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Environmental Impact Statement (EIS)  
on Northern Right Whale Research  
in the Atlantic and Pacific Oceans.

Scoping Meeting

San Diego, California  
December 10, 2005

Reported by Claire A. Wanner, CSR No. 12965

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Environmental Impact Statement (EIS)  
on Northern Right Whale Research  
in the Atlantic and Pacific Oceans.

Scoping Meeting,  
commencing at the hour of 6:00 p.m. on Saturday,  
December 10, 2005, at 1 Market Place, San Diego,  
California, before Claire A. Wanner, Certified Shorthand  
Reporter in and for the State of California.

1                   MR. MICHAELSON: There are a lot of really  
2                   excellent seats right up in here in the front that are  
3                   going. So we highly encourage you to move forward.  
4                   Everyone has brushed their teeth up here.

5                   MR. LEATHERY: We showered.

6                   MR. MICHAELSON: Really, it's good. You can get  
7                   closer. We'll be okay. Much better.

8                   My name is Lewis Michaelson. I work with a firm  
9                   called Cats & Associates. And I've been asked to perform  
10                  as the moderator for tonight's scoping meeting. I'm sure  
11                  you all know why you're here. And I notice that the vast  
12                  majority took advantage of the poster stations.

13                  We're very glad you took time out of your very  
14                  busy day to be here at this scoping meeting for the  
15                  Environmental Impact Statement on the Northern Right Whale  
16                  research in the Atlantic. And in case you didn't already  
17                  know, we're in San Diego, California. The purpose of  
18                  these scoping meetings is to allow for earlier public  
19                  notification of a proposed federal action. And I know I  
20                  talked to a couple people who this is their first  
21                  exposure. And what that means is we're very much at the  
22                  front end of this process of preparing the environmental  
23                  document. The purpose also of scoping is to provide the  
24                  National Marine Fishery Service the opportunity to present  
25                  this proposed action with two presentations from the two

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1 people seated to my right here.

2 But most importantly, this is an opportunity  
3 before the draft document is prepared to seek your input  
4 on the scope of the EIS. There are three meetings being  
5 held. This is the middle one. As many of you may know we  
6 held one in November at New Bedford, Massachusetts. The  
7 National Meeting of Fishery Services tried to make this as  
8 easy as possible, knowing that there are certain places  
9 where researchers tend to congregate and having it on the  
10 research on the population of where the researchers are.  
11 We're here with you. And then the third meeting will be  
12 in Silver Springs, Maryland, for those other NGOs and  
13 regulators and others from around the Washington D.C.  
14 area.

15 The agenda consists of basic information on  
16 scoping the background on the NEPA process; and then for  
17 those of you who may not know a lot about it or know  
18 you're part of the big picture of all the different types  
19 of activities that go on under the title of Right Whale  
20 research. And then, if you're not familiar with NEPA,  
21 they work for proposed action and alternatives.

22 So it's important to lay those out for you and  
23 understand that that's where we are at the beginning. But  
24 that's one of the things you can provide input on --  
25 alternatives or the scope of alternatives.

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1                   And the most important thing, once we finish,  
2                   we'll have an opportunity for each of you to offer other  
3                   comments.

4                   The layout. Hopefully you figured out there's a  
5                   registration area. You took advantage of the staffed  
6                   exhibit area. We'll have the formal presentation and then  
7                   comments. If you want to comment, we ask that you sign in  
8                   so I can call people at the sign-in sheet. Those are  
9                   available. And I bet Deborah Hiller will hand them out.  
10                  If you raise your hand, she will bring you one.

11                  In addition to oral comments, you can provide  
12                  written comments; and you can turn those in tonight.  
13                  We'll be happy to take those. And the person seated to my  
14                  right right here -- this is Claire. She's going to be  
15                  helping us get a good transcript. So we'll have a  
16                  verbatim record of what is said here tonight. And as a  
17                  part of typing it away, she will also be making an audio  
18                  recording.

19                  And with that I'd like to turn it over to Stephen  
20                  Leathery for our first presentation.

21                  MR. LEATHERY: Hi. My name is Steve Leathery,  
22                  and I'm in charge of permits division and all sorts of  
23                  resources and headquarters of the National Marine Fishery  
24                  Service in Silver Spring. Our division issues scientific  
25                  research permits for U.S. citizens globally for endangered

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1 species marine mammals. And we also issue small-take  
2 authorizations under the Environmental Protection Act for  
3 activities that may harm marine mammals. And that would  
4 be things like coastal marine construction, naval sonar  
5 and other Department of Defense activity, and oil and gas  
6 oceanographic research using air guns -- among others.

7 This is a language out of the National  
8 Environment Policy Act. Those of you that are not  
9 familiar with it, NEPA is a Sunshine Law. It requires the  
10 federal government to disclose its activities and arrange  
11 reasonable alternatives to proposed activities. It  
12 invites the public to participate in the process --  
13 especially under an environmental impact statement such as  
14 this -- where we produce a draft and then take comments on  
15 the draft and then the final. You can read the language  
16 there that's right out of the act.

17 And the requirement is an analysis of the  
18 potential environmental consequences. And that could be  
19 both good consequences and bad consequences. So even if  
20 it's something that's going to be a benefit to the  
21 environment, we're still required to take a look at that.  
22 And again, the public involvement in the process is key.

23 Components of the proposed action and reasonable  
24 range of alternatives; a description of the affected  
25 environment; potential environmental consequences of the

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1 action; mitigations; and consideration of the public input  
2 and comments. And beyond the public, we also invite other  
3 federal agencies to come; such as, the Marine Mammal  
4 Commission, Minerals Management Service, and others.

5 These are the full range of environmental factors  
6 and environmental impact statement consideration. In this  
7 case the fundamentally important things are the endangered  
8 species in marine mammals and also the cumulative  
9 impacts -- the last impact on the one list. And we would  
10 consider all these other things; but for the sake of this  
11 document, those will be some of the really key components  
12 of the analysis.

13 This is the phase in an EIS process. You are in  
14 the first sub-bullet in the scoping phase. Lewis  
15 mentioned that we've already had one scoping meeting.  
16 This is the second, and we'll have a third in Silver  
17 Spring. We'll work to take the comments that are given  
18 during scoping either in writing or orally at these  
19 meetings. We'll consider those and develop a draft EIS,  
20 and then we'll publish that. And then there will be a  
21 comment period where the public can comment on what our  
22 draft says or doesn't say. And then we'll consider all  
23 those comments and produce a final Environmental Impact  
24 Statement. And the final EIS includes a response to any  
25 comment that we receive. Any comment that we receive we

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1 have to respond and give a public response to that  
2 comment. And then we issue it and have a record of  
3 decision. And all along the way there are opportunities  
4 for public involvement and input. The key part of that is  
5 the input from the research community. We really want to  
6 hear from researchers and others with a knowledge of  
7 research techniques and with the biology and life history  
8 and antigenic impacts to Right Whales.

9 Here's our tentative schedule. We're in scoping  
10 now. We hope to go through and develop this and publish a  
11 draft by around November 2006, take a look at the public  
12 comments, do a final document, and then try and get that  
13 completed hopefully by August of 2007.

14 And now I'm going to turn it over to one of my  
15 staff -- Tammy Adams -- to go through more of the details.

16 MS. ADAMS: As most of the audience, I'm a little  
17 jet-lagged; and I've over-compensated with too much  
18 caffeine. So if I talk too quickly, I apologize in  
19 advance. I'm going to talk about the research, the  
20 proposed action, and alternatives that we are seeking  
21 input on.

22 So currently we have 13 permits authorizing  
23 research on Right Whales, and that includes both the  
24 Atlantic and Pacific stocks or populations. The permits  
25 expire sometime between 2006 and 2010 depending on when

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1 they were issued. All of our permits are typically issued  
2 for a five-year period. The permits combined offer; a  
3 total of over 70 researchers. That includes the principal  
4 investigators and all of their listed coinvestigators.  
5 And there are a number of categories of Northern Right  
6 Whale research that we've identified and grouped these  
7 into. And as you probably would expect, we encompass  
8 things like close approach for observations, take photo  
9 ID, sampling -- which can range from collecting sloughed  
10 skin or taking biopsy samples or doing ultrasound  
11 measurements; and tagging -- putting devices on the animal  
12 or implantable tags into the animal to collect information  
13 on a variety of things, such as habitat use; and just  
14 general population monitoring and assessment work. How  
15 many are there? Where do they go?

16 We also authorize some acoustic playback or what  
17 are called "controlled exposure experiments," where we  
18 play sounds to the animals and observe their responses.  
19 And, of course, we have to permit disentanglement response  
20 because of the Endangered Species Act. To do that  
21 requires a permit.

22 What are the research needs for recovery? The  
23 Right Whales have a recovery plan under the Endangered  
24 Species Act. And that identifies a variety of the types  
25 of research that need to be done including detection,

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1       which is the sort of population monitoring.  Where are the  
2       whales?  Entanglement and stranding response.  Because  
3       entanglement in gear is perhaps one of the biggest threats  
4       that face Right Whales in the Atlantic.  Looking at  
5       contaminant levels and how that affects the species.  
6       How's the general health of the population?  Again,  
7       habitat-use patterns.  Where do they go, and what do they  
8       need?  What do they need when they go there?  And just  
9       monitoring status and trends in abundance; and  
10      distribution is an indicator of how the species is going.

11                So the study area for this EIS includes two  
12      places.  One is the Atlantic Ocean, which we permit  
13      research that takes place in both the known summering  
14      grounds in the north Atlantic off of New England; and also  
15      the known calving grounds out of the southeast of Georgia  
16      and Florida; as well as the migratory corridor between  
17      those two places.  We put tags -- our researcher put tags  
18      on animals to figure out where else they might go.  So  
19      there's an unknown locations' category.

20                And in the Pacific Ocean where we know less about  
21      Right Whales, we have some people studying where they think  
22      the potential summering grounds are.  So that's an action  
23      area.  And also just opportunistic locations.  If someone  
24      spots a right whale, we have permits that allow them to  
25      tag it and photo ID it.  The purpose of permitting these

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1 things is to find out about Right Whales. And the purpose  
2 of knowing of where the research is going is so we assess  
3 what else is in the environment; that that could be  
4 affected by authorizing the permits.

5 So if you looked at the posters, you saw that we  
6 have defined a purpose and need for this document. And  
7 the purpose is to provide -- the purpose of issuing the  
8 permits is to provide an exception to MMPA and ESA  
9 prohibition on takes through issuance of permits for  
10 scientific purpose related to recovery. And the reason we  
11 need to issue these permits is to facilitate this  
12 research. Particularly, that that will result in  
13 information that will aid NMFS in doing things; taking  
14 actions that will help the species get off the endangered  
15 species list and recover.

16 The proposed action, as Steve discussed -- it was  
17 something that we -- what we're talking about doing is --  
18 that we're seeking input on is to issue permits to those  
19 people who have the appropriate qualifications to do  
20 research that has been determined as critical or essential  
21 to the conservation needs of the species. These would be  
22 things that are identified in the species recovery plan or  
23 otherwise have come up through scientific study. And  
24 we're calling this also our "minimum take level." This  
25 would be the minimum amount of research that needs to be

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1 done to get the information needed to recover the species.

2 One alternative to this action alternative we're  
3 calling the "maximum allowable take level." And this  
4 would be based on the combination of current and  
5 future-proposed research to help us determine what that  
6 level would be. And essentially we would issue permits  
7 until we have reached a number of authorized take that is  
8 just below the jeopardy threshold under the ESA. And for  
9 those of you that don't know, Section 7 of the Endangered  
10 Species Act requires, as a federal agency, to ensure that  
11 any action we undertake will not further jeopardize the  
12 continued existence of the species that is the subject of  
13 the permit.

14 We have a no-action alternative which is required  
15 by NEPA to be evaluated as a comparison. And there are no  
16 action alternatives. It would be the conduct the research  
17 already allowed under existing permits. That means that  
18 no new permit would be issued to replace expired permits,  
19 starting in 2006. In 2010 no research would be authorized  
20 for Right Whales. No amendments would be granted to  
21 existing permits to allow modifications of research that  
22 is underway. And as I said when the permits expire in  
23 2010, we would not issue permits to renew that.

24 Other alternatives we have considered, but that  
25 we may not carry forward, would be a permit moratorium

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1 where we do not issue any permits and suspend those that  
2 are -- the second one would be suspension of intrusive  
3 research. So we would allow permits to continue doing  
4 things like aerial surveys; and permit ID and behavioral  
5 observation because, without the permit, people to do what  
6 is defined as intrusive, such as taking or attaching tags  
7 to animals. And another would be the status quo which  
8 would be to review the existing permits as they expire to  
9 maintain the current level of research.

10 We, at this point, decide not to consider these  
11 alternatives further because they do not meet the purpose  
12 of proposed action, which is to gain information to  
13 recover the species. Nor do they allow collection of  
14 information critical to the survival of the species to be  
15 collected by modifications to the perimeter in other ways.

16 The major environmental issues to be addressed in  
17 the EIS include the agency's information needs for  
18 conservation and recovery of the species. And pensions --  
19 those come from the species recovery plan. We are looking  
20 at what types of research activities should be permitted  
21 or need to be permitted. What are the appropriate  
22 mitigation measures? And then looking at types of  
23 research activities to be permitted and mitigation  
24 measures to go with them. We're asking for input from the  
25 public on what the temporal and geographic of the scale of

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1 the research that should be authorized, as well as the  
2 sample sizes that would be appropriate for various methods  
3 and questions that need to be answered. And also that is  
4 something the foundation of NEPA -- we're looking at the  
5 cumulative impact of research activities on Right Whales  
6 and their environment.

7 The advantages of doing this EIS are that it  
8 provides full disclosure to the public of our decision --  
9 making. All the factors that we look at in deciding which  
10 permits to issue provides a comprehensive look at all  
11 possible permits at one time. It assisted in development  
12 of mitigation measures and what we could -- are the best  
13 management practices such as: What are the appropriate  
14 sample sizes, types, and place to do different types of  
15 research? And it would reduce our need to state  
16 permit-specific level, which maybe comes as new  
17 adaptations came in. We may not do the analysis. And  
18 they could be issued more quickly and facilitate the  
19 appropriate research.

20 So we're asking for a number of different types  
21 of information during this public-scoping process. And  
22 one of them is what types of research need to be  
23 permitted. So we're asking -- in answering that question  
24 are three critical research needs for species that have  
25 not been identified in the recovery plan. And if so --

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1        what are they? And how would identifying those things  
2        benefit the species. And we're asking the most  
3        appropriate methods to obtain the information needed. So  
4        if there's more than one way to find out what the species  
5        contaminate load is; and one of them might have a lower  
6        impact on the population. We're asking for more  
7        information about that.

8                    We're looking for the appropriate level of  
9        research, how much specific activity is enough for our  
10       needs, and can there be too much. This is a question,  
11       among other things, of statistical analysis. If your  
12       sample size is not large enough, perhaps you need to  
13       redesign your study. If your sample size is too big,  
14       maybe you could dedicate some of your effort to answering  
15       an additional question.

16                   One of the questions we're asking to the public  
17       to give input on is whether NMFS should set limits on  
18       activities. You can only do "X" number of this type of  
19       activity in a year. Should there be different standards  
20       or more restrictions for age or reproductive classes?  
21       Should we be more protective of females with newborn  
22       calves?

23                   We're also looking for information on how to best  
24       coordinate research. Should we limit the number of  
25       permits, for example? And should we require researchers

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1 operating under different permits to use the same or  
2 comparable methods to maximize the information they  
3 collect for our needs?

4 We're also looking for information on  
5 qualifications of research. If we're issuing permits, for  
6 example, for biopsy sampling whales -- is there a minimum  
7 amount of research experience a person should have before  
8 they're allowed to approach these animals and take an  
9 intrusive sample from them?

10 And we're also looking for information on the  
11 potential effects of research. And that could be not just  
12 from Right Whales, but from other species of whales and  
13 other species of marine mammals and other animals in  
14 general. And we're looking for recommendations on study  
15 designs that could help us look for answers, where the  
16 existing research does not tell us what to expect.

17 That's the end of my presentation, and I'm going  
18 to turn it back over to Lewis.

19 MR. MICHAELSON: Thank you very much. Deborah,  
20 have you had anyone hand in a card? I have one card. Can  
21 you bring that up to me? Ordinarily, we take a break here  
22 to kind of organize all of these cards. I don't think  
23 we're going to need a really big break at the moment.

24 Is there anyone who -- since they've heard this  
25 presentation -- has been inspired to provide some input?

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1 Can you give her a card, and she can fill it out. Let me  
2 just give you the mechanics of this. Because we have  
3 plenty of time and a few of you, we're going to start the  
4 process the way we conduct it at all the meetings in order  
5 to make it fair; which is, have you sign in and give you  
6 four minutes to offer your comment. After we've given  
7 everyone their first chance. If people who've already  
8 spoken want to come up for a second helping, we're going  
9 to do that as well; because we do want to hear from you.

10 It's being audiotaped, so we just ask people to  
11 come up to the microphone and speak slowly and clearly, so  
12 we can make sure we get a good record of what was said.  
13 And I want to remind again, oral comments are great;  
14 however, written comments are given the same weight and  
15 consideration as oral comments. And since many people are  
16 deathly afraid of public speaking, we're very happy to  
17 take your written comments as well. And particularly on  
18 something of this nature with its research and scientific  
19 aspect -- we anticipate many of you will provide comments  
20 and have difficulty fitting that into four minutes anyway.  
21 You probably want to provide some very detailed, written  
22 comments.

23 We have written comment sheets. If you want to  
24 fill them out or hand them in tonight, that's great. If  
25 you want to mail them in, just make sure that they arrive

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1 at NMFS by January 31, 2006. There a number of handouts  
2 that have information about e-mail and fax and all that  
3 stuff. But NMFS is trying to make it as easy as possible.  
4 You can fax it or e-mail it or mail it in.

5 There's also information available in addition to  
6 the Web site. A lot of this is available online. There  
7 is information about scoping. And the documents  
8 themselves will eventually be put into libraries in key  
9 places around where we've held these scoping meetings and  
10 on the NMFS home page.

11 If you didn't already register when you came in  
12 because you thought "I'm not speaking tonight," or you  
13 missed it because you came into the poster station, we are  
14 trying to pull up as good a mailing list as we can to keep  
15 you all informed. So please fill that out -- if you  
16 haven't already -- if you want to stay up-to-date and in  
17 the loop on what happens during the development of the  
18 EIS. So there's the five-minute break I'm not going to  
19 take.

20 All right. And no need for backup sides. So  
21 we're all -- the two names that we have are Jessica  
22 Koelsch and Sharon Young. And in my extremely high-tech  
23 way of indicating when four minutes are up -- when you've  
24 been speaking for three minutes, I'll put up one finger  
25 like that. And then when four minutes are up, I'll close

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1 my hand like that. Again, we're more than happy to take  
2 second helpings. Just to make this process consistent  
3 from meeting to meeting, that's how we're going to do it.

4 So, Jessica Koelsch, would you please come to the  
5 microphone and adjust it to your height and make sure it's  
6 on.

7 MS. KOELSCH: I didn't know if I was going to  
8 speak or not. I'm with Ocean Conservancy, and I came to  
9 listen and learn. But I'm still reviewing the issue, and  
10 we'll submit comments in writing. But just some initial  
11 thoughts. I appreciate the efforts you guys are doing in  
12 looking at this. I believe it definitely needs a careful  
13 coordination of the research projects and ensure that the  
14 project is designed to help the Right Whales recover and  
15 survive and not cause unexpected harm.

16 We definitely recommend prioritizing and  
17 streamlining the permits and projects that are most  
18 relevant to the species recovery, specifically ship strike  
19 and fishery entanglement issues. Presently, we lean  
20 towards the proposed action on the minimum-take  
21 alternative -- however, definitely need to take a closer  
22 look at it. Concerned about just making sure that you  
23 don't construe the minimum take so narrowly to exclude  
24 studies that might take a longer-term approach. But one  
25 of the big take-home messages is that NMFS needs to act

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1 quickly; and based on the science that you already have in  
2 existence regarding ship strike and entanglement. And  
3 that's all I got for now. I might say more later.

4 MR. MICHAELSON: Thank you. Sharon Young?

5 MS. YOUNG: Sharon Young with Humane Society,  
6 United States. As Jessica said, I just want to briefly  
7 speak because we'll be submitting much more extensive  
8 comments in writing, which will be no surprise to the  
9 agency.

10 I think in general I echo some of what Jessica  
11 said. My concerns with regard to the research in Right  
12 Whales are that there very clear problems for the  
13 researchers -- as matter of the permits process -- for how  
14 to coordinate among researchers. I think one of the  
15 problems in the past has been that people do not always  
16 coordinate and are not aware of who's doing what or how  
17 they can piggyback on some other people's stuff. And some  
18 of the goals -- you're figuring out areas; if you're going  
19 to tag an animal; if that tagging an animal that we don't  
20 already know where it goes for the winter. So those sorts  
21 of coordination -- that sort of coordination is really  
22 critical because it doesn't always happen in the field.  
23 People that are doing the -- I don't work with the people  
24 that do ID, the biopsy on tagging. So there are --  
25 researchers are required to coordinate and assure that

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1 they're working together.

2 I also agree that there needs to be greater  
3 priority given to certain types of activities and other  
4 permits for doing -- need to be streamlined under the  
5 harassment takes. But in the scheme of things -- given  
6 the dire straits of the species, and the knowledge that we  
7 look about mid Atlantic migratory quarters on the East  
8 Coast and about the habitat use of the West Coast Right  
9 Whales it's really important that we streamline those  
10 processes for people out there looking for them.

11 On the other hand, I think that invasive research  
12 does require a certain amount of additional analysis to  
13 try to determine impact. And I do believe that there are  
14 certain categories of animals -- calves for sure and  
15 females -- as they deserve the greatest consideration.

16 And then the only other comment that I wanted to  
17 offer right now is that -- I'm not sure how this can be  
18 done by the permitting process. But I think it is really  
19 important to underscore what the agency has said. Can it  
20 prioritize the type of research that is done; that we know  
21 proximal costs is entitlement and ship strikes? Research  
22 that determine ways to reduce those impacts is really  
23 critical. Other research -- which I think is bonified  
24 research and is helpful in understanding the dynamics,  
25 factors involved in the recovery, or lack thereof in the

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1 species -- I think may need to be a lower degree of  
2 priority. Both on terms on research -- that are given to  
3 research and to the priority in which permits are analyzed  
4 in order to save time. In order -- genetic research is  
5 important, but I think it contributes to the short-term  
6 resolution and therefore a lower-level priority.

7 MR. MICHAELSON: Thank you. Is there anybody  
8 else who'd like to -- bolden by others' trip to the  
9 microphone -- that would like to say anything? And would  
10 you like second helpings? You didn't use all four -- so  
11 I'm guessing you didn't. Maybe something just popped into  
12 your head. We're hear; you're hear. At the other meeting  
13 we did something we think you're going to like. We closed  
14 out the meeting, ended the record, and then had just kind  
15 of an informal Q and A. Whatever else anybody might have  
16 on their mind; or just some questions that didn't get  
17 cleared up because you were going to go poster station.

18 So with that we will adjourn the meeting at  
19 8:04 p.m.

20

21 (Whereupon, the meeting concluded at 8:04 p.m.)

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I, Claire A. Wanner, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were placed under oath; that a verbatim record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; further, that the foregoing is an accurate transcription thereof.

Dated: This \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_,  
at San Diego, California.

\_\_\_\_\_  
Claire A. Wanner  
CSR No. 12965