

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 09/20/2006

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Barry West
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 07/06/2006

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200607-0648-003
TITLE: Basic Requirements for Special Exemption Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0084
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 09/30/2009

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	962	6,411	2,000
New	993	6,728	2,000
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	31	500	0
Change due to Agency Adjustment	0	-183	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: John F. Morrall III
Acting Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Basic Requirements for Special Exemption Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive			

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	10. Abstract
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

SUPPORTING STATEMENT
BASIC REQUIREMENTS for SPECIAL EXEMPTION PERMITS and
AUTHORIZATIONS to TAKE, IMPORT, and EXPORT MARINE MAMMALS,
THREATENED and ENDANGERED SPECIES, and for MAINTAINING a CAPTIVE
MARINE MAMMAL INVENTORY UNDER the MARINE MAMMAL PROTECTION,
the FUR SEAL, and the ENDANGERED SPECIES ACTS
OMB CONTROL NO.: 0648-0084

A. JUSTIFICATION

1. Explain the circumstances that make the collection of information necessary.

This information collection includes the following: 1) application instructions for research and enhancement permits; 2) letters of intent for General Authorizations; 3) photography permit guidelines; 4) application instructions for public display permits; and 5) marine mammal public display inventory reports (Mammal Transfer/Transport Notification, Marine Mammal Data Sheet, Marine, and Person/Holder/Facility Sheet). This information collection applies to protected species for which the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) is responsible, including the marine mammal species of cetaceans (whales, dolphins and porpoises) and pinnipeds (seals and sea lions); and threatened and endangered species including sea turtles (in water), white abalone, smalltooth sawfish, and shortnose sturgeon. The collection instruments with discussion/justification of the information collection requirements for each instrument are attached.

The NOAA Fisheries Office of Protected Resources Permits, Conservation and Education Division (Permits Division) has the responsibility for processing permits for the marine mammals and endangered and threatened species listed above. This excludes salmonids, which are processed in the NOAA Fisheries Regional Offices under OMB Control No.: 0648-0402. Permit applications for sea turtles, white abalone, smalltooth sawfish, and shortnose sturgeon were previously submitted under Office of Management and Budget (OMB) Control No.: 0648-0402, and are now being combined with permit applications for marine mammals under OMB Control No.: 0648-0084 in order to: 1). accommodate the Permits Division's responsibilities for processing permits involving these multiple species; 2). streamline the process for requesting takes of multiple species; and 3). to enhance the development of an online permit application system. The title of this collection instrument has been modified accordingly. Information in this collection instrument represents a revision of a currently approved collection (specifically, for the scientific research and enhancement permit application only). The remainder of the information in this collection instrument is an extension of a currently approved collection.

The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*; MMPA), the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; ESA), and the Fur Seal Act of 1966 (16 U.S.C. 1151 *et seq.*; FSA), hereafter referenced collectively as "the Acts," mandate the protection and conservation and prohibit the taking, importation, and export of marine mammal and endangered and threatened species or their parts or products except under certain limited circumstances. Exemptions for scientific research, enhancement, educational or commercial photography, public display, and certain other limited purposes are allowed provided permits are applied for and received or other necessary authorizations obtained. Appropriate sections of the Acts and applicable regulations are attached.

The Marine Mammal Protection Act (MMPA) - Section 101(a)(1) of the MMPA states: "...consistent with the provisions of section 104, permits may be issued by the Secretary for taking and importation for purposes of scientific research, public display or enhancing the survival or recovery of a species or stock...". Section 104(b) requires that "Any permit issued under this section shall (1) be consistent with any applicable regulation established by the Secretary...and (2) specify (A) the number and kind of animals which are authorized to be taken or imported, (B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported, (C) the period during which the permit is valid, and (D) any other terms or conditions which the Secretary deems appropriate." Section 104(c) states: "Any permit...shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed..." And finally: "Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority."

Under section 104(c)(3)(C) of the MMPA, as amended, persons may be authorized to take marine mammals in the wild by Level B harassment, as defined in 50 CFR 216.3, for purposes of *bona fide* scientific research. Interested persons must submit a letter of intent in accordance with the interim final rule published on October 3, 1994 and submit certain information outlined at 50 CFR 216.45(b) under the General Authorization. Under section 104(c)(6) of the MMPA, a permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild and that does not exceed Level B harassment. Application Instructions for Photography (50 CFR 216.42, Reserved) have not yet been proposed but applicants are currently provided with interim guidance for photography permit applications, included in this package. This guidance is similar to that required for the General Authorization since the type of takes and level of harassment authorized under these are similar in nature.

Section 104(c)(8) of the MMPA eliminates the need for a permit or additional authorization to possess, sell, purchase, transport, or export captive marine mammals, or their progeny, for public display purposes, provided the recipient and holder meet applicable criteria. However, a 15-day advance notification is required prior to the transport, transfer, sale, or other disposition of captive marine mammals. Further, Section 104(c)(10) of the MMPA, as amended, directs the Secretary to establish and maintain an inventory of captive marine mammals consisting only of the information specified in Section 104(c)(10)(A-H). In addition to the Section 104 provisions, Section 402(b) states that the Secretary shall "...collect and update, periodically, existing information on..." marine mammal rehabilitation procedures and practices. Permits are required for captures from the wild, first time imports, and for retaining a releasable stranded animal for purposes of public display. Provisions implementing specific requirements for public display permits, previously codified at 50 CFR 216.39, have not been finalized; these permits continue to be processed in accordance with 50 CFR 216.33.

The regulations at 50 CFR part 216, subpart D [published May 10, 1996 (61 FR 21926)] consolidate permitting and authorization requirements under the MMPA for marine mammals. The ESA regulations at 50 CFR 222.308 specify that "Permits for marine mammals shall be issued in accordance with part 216, subpart D of this chapter." The regulations at 50 CFR 216 provide procedures for the disposition of rehabilitated stranded marine mammals under special exception permits, marine mammal research and enhancement permits (including ESA-listed

marine mammals), disposition of marine mammal parts, letters of intent under the General Authorization, and reporting requirements.

The Fur Seal Act of 1966 (FSA) - Section 104 of the FSA, as amended in 1983, provides for the Secretary to conduct research on fur seal resources of the North Pacific and to permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes. Since northern fur seals are also marine mammals, to avoid duplication, applications for permits for scientific research are also processed under the MMPA regulations of part 216, subpart D (59 FR 50372, October 3, 1994).

The Endangered Species Act (ESA) - Section 9 of the ESA prohibits, except under permit, importation, taking, possessing or selling any endangered species of fish or wildlife. In accordance with section 10(a)(1)(A) the Secretary may permit, under such terms and conditions as he/she may prescribe, taking of listed species for scientific purposes or to enhance the propagation or survival of the affected species. A final rule published in the *Federal Register* in May 1996 revised 50 CFR 222.23(b) permit application procedures so that marine mammal permits would be issued in accordance with the provisions of 50 CFR part 216, subpart D, as mentioned above. The regulations implementing the authority to issue permits for scientific research or enhancement for other ESA-listed species are found at 50 CFR 222 (Attachment 2). The regulations contain information collections for applications for scientific research and enhancement permits and reporting requirements for permits. When endangered species are involved, the Permits Division is required to consult with the NOAA Fisheries Endangered Species Division under section 7 of the ESA to determine whether the permitted activities may jeopardize the continued existence of ESA-listed species. The revised scientific research and enhancement permit application instructions provide clarification of information required for such consultations in hopes to eliminate the need to ask applicants for additional information during the consultation process and reduce the overall processing time for permits involving ESA-listed species.

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) – Issuance of a permit is considered a major federal action, which is subject to NEPA. While General Authorizations and some scientific research permits are categorically excluded from the requirements to prepare extensive environmental analyses, under certain circumstances (e.g., if a threatened or endangered species is involved; if the activity is highly controversial; if the effects of the activity are unknown) preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) may be necessary. If an application does not contain sufficient information on the environmental impact of the proposed activity to determine whether an EA or EIS is necessary, or if the information is insufficient to complete such analyses, the application may be returned or processing may be delayed. An EA/EIS must consider the potential environmental impacts of the proposed research using the description of the activities provided in the application and the best available information on the effects of such activities. The revised scientific research and enhancement permit applications have updated the existing questions pertaining to NEPA in hopes to facilitate complete applications and overall reduce the processing time for permits requiring NEPA analyses.

Summary – An applicant who wishes to obtain an exemption to the take prohibitions of the Acts must provide justification as to why NOAA Fisheries should grant them the permit or General Authorization consistent with the provisions of the Acts and implementing regulations. NOAA

Fisheries needs the information provided in the application in order to make an informed decision as to whether to grant or deny the permit or General Authorization and whether the taking, import, export, or release disposition is necessary, humane, will not operate to the disadvantage of the species, is in the best interest of both protected species and the public at large, among other things, and is consistent with the purposes and policies of the Acts and implementing regulations. Without a permit or General Authorization, any taking of a protected species would be subject to prosecution as a violation of the Acts. Public display inventory reports allow NOAA Fisheries to meet a Congressional mandate and make information available to the general public regarding marine mammals in captivity, which are considered a public trust resource.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The Director, Office of Protected Resources, NOAA Fisheries will use the information to determine that the proposed taking, importation, or export meets the goals and objectives of the Acts and regulations and as a basis for a decision on issuance or denial of permits and authorizations. If certain information required by the Acts is not provided, NOAA Fisheries cannot complete a review of the application and the application processing is suspended. For marine mammals, the Marine Mammal Commission is also required by the MMPA to review all permit applications. If a permit or authorization cannot be issued, any taking, import, or export would be a violation of the Acts and subject to prosecution.

The information in applications for scientific research and enhancement permits and General Authorizations is submitted and reviewed one time only unless the submission is inadequate, in which case the application is returned. Unless an amendment of the permit is necessary, the applicant need not submit new information. As permits are valid for up to 5 years, less frequent collection of information is not appropriate for these applications. Holders of marine mammals on public display submit reports anytime they wish to transport or relinquish custody of animals, export animals, and anytime an animal gives birth or dies in captivity and must provide 15 day notification of transfers and transports, and 30 day notification of births and deaths. The marine mammal inventory reports are mandated by Congress and are used to keep track of the captive marine mammals in public display facilities. The reports required annually by the MMPA permits (50 CFR 216.38 of the regulations and §104(c)(1) of the MMPA) are used by NOAA Fisheries to ensure that the terms and conditions of the permit are being complied with, to evaluate the potential impacts of research activities on marine mammals, and to coordinate permit activities to ensure that unnecessarily duplicative and potentially cumulative harassments are kept to a minimum. The reports required by the ESA permits (50 CFR 222.308(d)(5)) and section 10(a)(2)(C)) are also used by NOAA Fisheries to ensure that the terms and conditions of the permit are being complied with and that the taking of the affected species is not appreciably reducing the likelihood of the survival and recovery of the species.

It is anticipated that the information collected will be disseminated to the public or used to support publicly disseminated information. As explained in the preceding paragraphs, the information gathered has utility. NOAA Fisheries will retain control over the information and

safeguard it from improper access, modification, and destruction, consistent with NOAA standards for confidentiality, privacy, and electronic information. See response #10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

All permit and General Authorization applications are available on the internet as PDF or Word documents (at <http://www.nmfs.noaa.gov/pr/permits/>), and applications can be mailed, faxed, or emailed to applicants if requested. Applicants in turn submit both paper and electronic permit and authorization application materials. Since it is required by the regulations (50 CFR 216.33 (a) and 222.308 (b)(13)) that the application be signed, it must be submitted in hard copy. Paper files are maintained for the Administrative Record and tracking and summary information is entered into an ACCESS electronic database. Electronic applications are distributed externally to NOAA Fisheries and other reviewers during the permit process. During application processing, NOAA Fisheries corresponds electronically with the applicant as much as possible. As required by regulation (50 CFR 216.33 (d) and 222.303(b)), a summary of each application is published in the *Federal Register* (which is available online on a real-time basis), and from that anyone from the interested public may contact NOAA Fisheries for the complete application, which can be sent to them electronically. Controversial or frequently requested applications are made available electronically on the internet during the public comment period at <http://www.nmfs.noaa.gov/pr/permits/review.htm>. Application summary information and permit processing information is entered into an electronic ACCESS database for tracking purposes.

Public display inventory materials and reports are paper forms that are received by mail and fax and are entered into a DOS-based electronic database (Permit Program Information Management System, PPIMS, which generates a Marine Mammal Inventory Report Summary, MMIRS). The MMIRS report is generally only available in paper form. The MMIRS is frequently requested by the public and made available under the Freedom of Information Act (FOIA). NOAA Fisheries and a private entity, the International Species Information System (ISIS), have a Cooperative Agreement, and marine mammal inventory information is shared. If funding is secured, a streamlined reporting method will be implemented and when fully operational, this system may be available on the internet to holders of marine mammals on public display and to the general public.

The Permits Division is working to make all public display inventory collection instruments available on the internet in the form of a PDF and/or Word document and should have those available electronically this year. Holders of captive marine mammals on public display could then retrieve these documents and submit those applications electronically, although signatures are required on some forms and paper submission would still be required in most cases.

Development of an online application system known as Authorizations and Permits for Protected Species (APPS) is currently in process. The intent of this on-line system is to provide a user-friendly and efficient electronic format for the public to apply for permits and authorizations for protected species, including those that are the subject of this Paperwork Reduction Act (PRA)

application, specifically for research, enhancement, General Authorization, photography, and public display permits. The first phase of this system, known as a Pre-Application Guide (PAG), is currently available to the public at <http://apps.nmfs.noaa.gov/>. The purpose of the PAG is to help prospective applicants determine what type of permit or authorization, if any, they may need. After answering several questions about the proposed work, the system will provide the user with a description of what the required permits/authorizations are and where to go for more information, including contact information and the appropriate application or forms currently available on the internet.

The APPS system will also replace the current ACCESS database used for permits and authorizations. Applicants will be able to submit applications and reports electronically, thus substantially reducing the need to submit paper applications and hopefully reducing the time spent filling out the paper applications. The public will also be able to search the APPS database and obtain information available to the public more efficiently and in an electronic format. The next step in the implementation of APPS will involve the transfer of ACCESS data to the APPS system, which is currently in process. It is not known when the APPS system will be available to the public for use in applying electronically for permits and authorizations. Some of the remaining issues to resolve include electronic certification (*i.e.*, electronic signature), continued streamlining to meet the needs of all agencies involved in the development of the system, testing of the system, and securing continued funding.

4. Describe efforts to identify duplication.

NOAA Fisheries and the U.S. Fish and Wildlife Service (USFWS) share responsibilities under the MMPA and ESA for certain species. If an applicant wishes to work with species under both NOAA Fisheries and USFWS jurisdiction, a joint permit may be required. In those cases, the applicant would need to apply to only one agency, and the agencies would coordinate to issue the applicant one permit. For applicants importing or exporting species or parts, two applications may be required, one for the MMPA and/or ESA permit, and one for the Convention on International Trade of Endangered Species of Flora and Fauna (CITES). Since the USFWS issues CITES permits for all CITES-listed plants and wildlife, some duplication is unavoidable.

There is no overlap or duplication for MMPA actions under the ESA or FSA as a single application and permit covers all requirements of these laws. The Permits Division included other species for which it now has responsibility into these permit applications to better streamline processing efforts. As well, in order to avoid any duplication with requirements under the ESA for section 7 consultations and requirements under the National Environmental Policy Act for determinations on the effects of proposed activities on the environment, we have clarified information requirements for these statutes so that additional or duplicative information will not be required during the permit process.

NOAA Fisheries has not identified instances where duplicative information is required for stranded marine mammal placement disposition. This information is coordinated with NOAA Fisheries Regional Offices as required by regulation (50 CFR 216.27). Some duplication has been identified with the public display inventory, MMIRS, and the private company, ISIS, as mentioned above in #3. However, any duplicative reporting is voluntary on the part of the marine mammal holders, as they are not required to report to ISIS and ISIS is not a federal

agency.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

There should not be a significant impact. The information is submitted one time for each permit, unless the applicant requests a modification or amendment to the permit. Permits are typically issued for up to 5 years to provide continuity in research and avoid the need to apply for a permit each year. Permit reports are required no more than annually. Applicants are requested to provide only that information required by the Acts and implementing regulations. Information requests for holders of marine mammals on public display are short forms or sheets and do not require much time to complete.

Because the majority of permit applicants and holders of marine mammals use computers in the conduct of their research and administration of their public display activities, NOAA Fisheries intends to develop an on line application system to simplify information collection processes as described above in #3.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Permit applications are initiated by an applicant who wishes the privilege of protection from the prohibitions of ESA, MMPA, or FSA. Without a permit application which follows the statutory and regulatory requirements, NOAA Fisheries cannot legally grant such a permit. The application information is submitted one time only unless the submission is inadequate, in which case the application is returned and a new application must be submitted. Unless an amendment of the permit is necessary, the applicant need not submit new information. As permits are valid for up to 5 years, less frequent collection of information is not appropriate for these applications.

Reports on activities conducted under permits and authorizations must be submitted annually. Annual reports must summarize activities during the reporting period, including an assessment of whether the research/enhancement/photography conducted under the permit or authorization during the reporting period addressed the stated objectives, as well as basic updates to application information. If this information is not submitted, NOAA Fisheries will not be able to adequately monitor the permit activities and compliance with permit conditions. Additionally, the information gained from the annual reports is used in making management decisions to aid in the recovery of listed species, assessing impacts of the permitted activities on the subject species, and in assisting with analyses required under Section 7 of the ESA and the National Environmental Policy Act.

For public display animals, Section 104(c)(2)(E) of the MMPA states "...No marine mammal...may be sold, purchased, exported or transported unless The Secretary is notified of such action no later than 15 days before such action..." Therefore, transfers, transports, and exports must be reported within this statutory timeframe. Whenever a significant change in the status of a captive animal occurs (e.g., birth, transfer, death), a special report must be submitted within 30 days (MMPA 104(c)(8)(B)(i)), consistent with OMB guidelines for information collection, which allows NOAA Fisheries to maintain an updated database of all marine mammals in captivity on public display, which is available to the public. Reports for public

display permits (for first time import or capture from the wild) consist of any updates to the marine mammal inventory that have not been reported during the previous year.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with OMB guidelines except for the following:

A notification report must be provided at least 15 days in advance of a proposed transport, transfer, or export of public display marine mammals, which is a statutory requirement imposed by Congress.

Section 216.45 of the Regulations requires General Authorization holders to notify the Regional Administrator (RA) at least two weeks in advance of starting the research to allow the RA to coordinate activities with others researchers that may be working in the area. The coordination of research decreases the impact of multiple activities on the marine species. Additionally, research conducted under a General Authorization does not include endangered species. Therefore, if endangered species are taken by General Authorization holders, it must be reported within 12 hours and the research discontinued. Taking an endangered species under the General Authorization is in violation of the MMPA, ESA and implementing regulations.

Similarly, permits for research and enhancement have similar reporting requirements to allow for Regional coordination of activities to minimize impacts to the species or stocks. In some cases for permit reports involving significant events taking place (e.g., mortality or injury of an animal, exceeding the authorized take, or the taking of a species not authorized by the permit), notification for these events must take place typically within two days after the event, to allow for quick response by NOAA Fisheries and the Permit Holder to incidents with a significant impact on protected and listed species and that were not authorized by the permit and therefore not anticipated.

8. Provide a copy of the PRA Federal Register notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

In response to the PRA *Federal Register* notice, 61 FR 16121 (attached), published on March 30, 2006, NOAA Fisheries received one comment that is not applicable to the PRA. No other comments were received.

NOAA Fisheries consults regularly with the scientific research and public display community, and other interested parties, to obtain their views on the availability of data, frequency of collection, clarity of instructions and record keeping, the amount of burden imposed, and ways to minimize burden. Such consultations occur at annual and bi-annual meetings including the Biennial Conference on Marine Mammals, the American Zoo Registrars' annual meetings, the

American Zoological Association's annual meetings, and other national and international protected species meetings and workshops.

Under Section 102 of the MMPA, NOAA Fisheries has consulted with and entered into a Cooperative Agreement with the private company, ISIS, to develop and administer the marine mammal inventory and transport notification system on behalf of NOAA Fisheries through modification of the ISIS windows-based software. Once funding is secured and the program is implemented, this effort will eliminate duplicative reporting and reduce the costs associated with updating the PPIMS software.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gifts will be provided to respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurance of confidentiality is given. A notice of receipt of permit applications is required to be published in the *Federal Register* and applications and supporting documentation are available for review by the public at every stage of processing and during the life of the permit. All permit and authorization documentation including reports and the MMIRS is subject to the Freedom of Information Act (FOIA). However, any personal information that is subject to the Privacy Act is redacted when released under FOIA.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no requirements for submission of information of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

Estimated total annual hours – 6,728

Total number of respondents – 518

59	New permit and General Authorization applications
200	Permit holders
50	General Authorization holders
194	Holders of public display marine mammals
15	Rehabilitation facilities

Type of information	Estimated number per year	Hours to complete	Total hours per year
Permit and authorization applications			
Scientific research and/or enhancement (SR/EN)	40	32	1280
Public display (PD)	4	20	80
Photography (PH)	10	10	100
General Authorization (GA)	10	10	100
Amendments to existing permits and authorizations			
Major	50	20	1000
Minor/Authorizations	105	3	315
GA changes	5	3	15
Reports to existing permits and authorizations and for public display inventory			
SR/EN	200	12	2400
PD	5	2	10
PH	25	2	50
GA	50	8	400
PD Inventory	194	2	388
Record Keeping			
SR/EN	200	2	400
PD	5	2	10
PH	25	2	50
GA	50	2	100
Retain or transfer rehabilitated animals	15	2	30
TOTALS	993		6,728

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in #12 above).

The total annual operations and maintenance cost burden is estimated at \$1,800. These costs were estimated from discussions with permit applicants/holders, and with NOAA Fisheries staff who process permits. The estimates include costs for postage at \$.39, overnight express service deliveries at approximately \$25 per package, and express postal deliveries at \$14.40 per package.

We do not estimate any additional costs beyond those necessary by normal business practices and/or research purposes (i.e., no costs for equipment such as computers). To publish research results or to justify research funding, a permit holder must maintain detailed records. Holders of marine mammals on public display are required to maintain inventory records for all animals in their collections as a requirement under the Animal Welfare Act. Therefore, we are not aware of any additional costs incurred by holders associated with this information collection.

14. Provide estimates of annualized cost to the Federal government.

The estimated annual cost to the Federal Government is \$272,575 calculated at \$25 per hour as follows:

Type of Action	Estimated number per year	Processing Time	Total cost per year
Permit and authorization applications			
Permit Applications	54	80	108,000
General Authorization (GA)	10	20	5,000
Amendments to existing permits and authorizations			
Major	50	50	62,500
Minor/Authorizations	105	10	26,250
GA changes	5	5	625
Reports to existing permits and authorizations and for public display inventory			
SR/EN	200	10	50,000
PD	5	3	375
PH	25	5	3,125
GA	50	5	6,250
PD Inventory	194	2	9,700
Retain or transfer rehabilitated animals	15	2	750
Estimated total cost			272,575

The estimated annual number of permit applications and requests to retain or transfer rehabilitated animals has been adjusted as described in # 12 above. The cost per hour to process these actions was increased from \$20/hour to \$25/hour.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB 83-I.

Summary of changes in 2006 (from 2003 PRA submission):

There were net increases of 37 respondents, 31 responses and 317 hours (500 additional hours due the program change of transferring permit holders from OMB Control No.: 0648-0402, and a net decrease of 183 hours due to adjustments).

SR/EN Permits – Justification for increase from 35 to 40 applications per year and justification for increase from 175 to 200 reports and recordkeepings: adding non-mammal ESA-listed species. This accounts for approximately 58 additional permit holders of non-mammal ESA-listed species formerly covered under OMB Control No.: 0648-0402. A number of marine mammal permits expired and new applications were not received, thus the total increase in permit holders was not as large as the addition of the new species. There are currently 196 holders total for marine mammal and ESA-listed species permits, thus we estimated 200 holders with reporting requirements. We do not anticipate a large increase in the number of applications received each year, as permits are valid for a 5-year period. The number of permits expiring and the number of new applications received are usually similar in number each year.

Justification for increase from 29 hours to 32 hours to complete a research/enhancement permit application: adding non-mammal ESA-listed species and clarifying requirements under the ESA

and NEPA. This does not represent a substantial increase in the number of hours to complete the application and represents a decrease for the non-mammal ESA-listed species. This takes into account changes made to the application to accommodate all species. Overall these changes should reduce processing time.

Justification for increase from 19 to 20 hours to complete a major amendment request: adding non-mammal ESA-listed species and clarifying requirements under the ESA and NEPA. In general, major amendment requests are similar to but less involved than a permit application request, and thus require less time to complete. The small increase is to account for revisions to the scientific research and enhancement permit application collection instrument, as major amendment requests will require some, but not all, of the same information to be submitted.

Justification for decrease from 20 to 10 hours to complete a GA application: The collection instrument used for applying for a GA asks questions that are similar in nature to that required for a photography permit, since the level of disturbance to marine mammals for this type of work is similar in nature, as well as the scope of the work involved. The applications received for both GA's and photography permits are similar in length. The change has been made to provide a more accurate estimate of time required to fill out a GA application.

Justification for decrease from 12 to 8 hours to complete a GA report: the GA report requires less detail than a research/enhancement permit report; thus, the hours have been reduced.

Photography Permits – Justification for decrease from 50 to 25 reports and recordkeepings there are fewer holders of photography permits requiring reports. Many photography permits have expired and generally, photography permits are for discreet projects and are not renewed after expiration. There has not been an increase in the number of photography permit applications received.

Holdings/Marine Mammals – Justification for increase from 178 to 194 Holders and PD inventories: there was an increase in the number of facilities holding marine mammals for public display purposes.

Rehabilitation Facilities – Justification for increase from 5 to 15 facilities and reports: advances have been made in the field of marine mammal medicine and veterinarians in rehabilitation facilities are better able to save animals, yet often the animals are considered not releasable to the wild (e.g., a dependant cetacean calf). However, these “non-releasable” stranded animals often do survive well in public display facilities. As more animals are kept alive due to improved medical practices, but cannot be released, more rehabilitation facilities have requested to retain these animals or transfer such animals to public display facilities, thus the increase.

Costs increased from \$1,712 to \$1,800 due to postage increases. This change is not reflected on the 83-I as it still rounds up to \$2,000.

16. For collections whose results will be published, outline the plans for tabulation and publication.

Permit-related activities are summarized and published in The Marine Mammal Commission Annual Report to Congress the subsequent year after permits have been issued. This report is a general summary of the number of applications received and the number of permits and authorizations issued. This report is available on the Commission's web site (<http://www.mmc.gov/>), which in turn is available on the Office of Protected Resources' web

site (<http://www.nmfs.noaa.gov/pr/glossary.htm>). A hard copy of the Marine Mammal Inventory Report Summary is available to the public at any time, upon request. Currently there are no other plans for publication of the information collected.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

We are not seeking this approval.

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

There are no exceptions to the certification statement.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

The information collection does not employ statistical methods.

MARINE MAMMAL DATA SHEET

Date _____
SHT# _____

OMB No. 0648-0084, exp / /

HN: _____ SN: _____

For NMFS Use Only

I. Holder-Specific:

Holder: _____ Facility: _____
Person or other Entity With Custody of the Marine Mammal Name of Facility (if different from Holder)

Date assumed custody: ____ - ____ - ____ Date arrived at Facility: ____ - ____ - ____

City/State/Zip (include Country for foreign facilities): _____
Location of Facility

Animal Identification No. _____ Animal Name: _____
(assigned by holder) (assigned by holder)

Captive Purpose(s): Public display Scientific research Enhancement

II. Animal-Specific:

Species: _____ Sex: Male Female Unknown
Common Name - Scientific Name

Population Name: _____

NOAA Identification No. _____ (check here if unknown or not yet assigned)

Date of birth: ____ - ____ - ____ Actual Estimated

Captive Origin (check only one): Captive born Wild capture Beach/stranded Unknown

Date of original captivity: ____ - ____ - ____ (ATTACH documentation if before December 21, 1972.)

III. Source: Indicate how and from whom custody of this animal was obtained, including change in facility.

Captive birth

Transfer/ Transport Name of Previous Holder: _____
Name of Previous Facility: _____

Import Permit No. _____ or For medical treatment otherwise unavailable (16 U.S.C. 1379(h)(2))

Beach/Stranded (Please see notes)

Wild Capture Permit No. _____ Collector: _____

Location: _____ / _____
Latitude/Longitude Geographical Name

IV. Disposition: The date and reason this animal left your custody or changed facility.

Transfer/ Transport Date: ____ - ____ - ____ Recipient: _____
Facility: _____

Death Date: ____ - ____ - ____ Cause: Premature/still birth Euthanasia Other

If "Euthanasia," indicate reason: life-threatening condition involving pain/suffering or other

If "Other Cause," describe briefly: _____

Release Date: ____ - ____ - ____ Permit No. _____ or Unauthorized release/escape
(reintroduction)

Location: _____ Tag number or description of other identifying markings
Geographic Location

Marine Mammal Data Sheet (MMDS)

NOAA FORM 89-882

Expires on

NOTES:

The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that persons holding marine mammals submit certain information to the National Marine Fisheries Service (NMFS). The MMPA requires that NMFS maintain an inventory of all marine mammals held for public display purposes and scientific research/enhancement (i.e., all marine mammals held captive except for those in captivity before December 21, 1972). In addition, the MMPA requires that NMFS be given advance notice 15 days prior to the transfer/transport of any marine mammal. To ensure compliance with these and related MMPA requirements, NMFS recommends that persons holding marine mammals in captivity use this *Marine Mammal Data Sheet* (MMDS) to submit inventory information regarding their captive marine mammals to NMFS. Use of this form will ensure that the MMPA required information is submitted in a consistent manner and that the NMFS marine mammal inventory is accurate and up-to-date.

Marine Mammal Data Sheets should be used when submitting information to NMFS in compliance with MMPA requirements applicable to persons holding marine mammals, including notifications of any additions/changes to your marine mammal inventory due to:

- Birth, Death, Transfer/Transport
- Retention or Transfer of Rehabilitated Beached and Stranded Marine Mammals (Authorization or Permit)
- Wild Capture, Import, Reintroduction to the Wild, including release or escape (Permit)
- Other (Corrections, etc.)

The animal-specific information in Section II will not change, whereas data in Sections I, III and/or IV will change with transfers/transports (changes of custody and/or facility/location). In accordance with MMPA requirements, NMFS requests notification of any change in custody or facility/location, including captive births and deaths. A copy of the Marine Mammal Inventory Report Summary (MMIRS) may be provided periodically and may be requested at any time by contacting the Permits, Conservation and Education Division at the address listed below.

All permit documentation including reports and inventory information required herein, is subject to the Freedom of Information Act (FOIA) with personal or sensitive information that is subject to the Privacy Act redacted when released under FOIA.

Marine Mammal Transfer/Transport Notifications

NMFS recommends that:

1. Holders notify NMFS of proposed transfers/transports by completing a *Marine Mammal Transfer/Transport Notification* (MMTTN) form, forwarding it to the Receiver for signature and submitting it to NMFS. It is not necessary to submit the MMDS for the animals proposed to be transferred/transported, but sufficient information must be included on the MMTTN to identify the animal(s).
2. The MMTTN must be received by NMFS at least 15 days prior to the actual transfer/transport date. Should you need to transfer/transport an animal before the required 15 day notification, please contact NMFS regarding an emergency waiver.
3. NMFS will reply with an acknowledgement letter and MMDS(s) to be updated upon receipt of the animal(s). The transfer/transport should occur within 60 days after initial submission of the MMTTN. If an extension is necessary, please contact NMFS.
4. At any time within 30 days of the transfer/transport, the Holder should forward to NMFS the updated MMDS for each animal actually transferred/transported (i.e. Section I and, as necessary, Section III to verify receipt of the animal(s)).

Beached and Stranded Marine Mammals – Retention or Transport

The retention or transport/retention of rehabilitated beached and stranded marine mammals requires a permit or written authorization under the MMPA. A permit is required to obtain such marine mammals for purposes of scientific research or enhancing the survival or recovery of species or stocks, or to retain or obtain such marine mammals for public display purposes where such animals have been determined releasable. Where such marine mammals have been determined non-releasable, NMFS authorization is required to retain or obtain them for public display purposes. Please contact the Permits, Conservation and Education Division at the number or address below for information on submitting such a permit application or authorization request.

QUESTIONS? If you need assistance completing this form please contact the Permits Division at (301-713-2289) or write to us at:

Permits, Conservation and Education Division - F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway, Room 13705
Silver Spring, MD 20910

Or by facsimile
at (301) 427-2521

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

PERSON/HOLDER/FACILITY SHEET Date _____

OMB No. 0648-0084, exp / /

PHF#: _____

For NMFS Use Only

I. Person/Holder/Facility-Specific:

Active: _____

- Permit/GA Applicant Permit/GA Holder Animal Holder Facility

Name: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

II. Responsible Official:

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

III. Primary Contact:

Name: _____

Title: _____

Address: _____

City: _____ State: _____ Zip: _____ Country: _____

Phone: _____ Fax: _____

E-Mail: _____

PERSON/HOLDER/FACILITY SHEET INSTRUCTIONS

NOAA FORM 89-880

Expires on

The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that persons holding marine mammals submit certain information to the National Marine Fisheries Service (NMFS). Under the MMPA, NMFS is required to maintain an inventory of all marine mammals held for public display purposes and scientific research/enhancement (i.e., all marine mammals held captive except for those in captivity before December 21, 1972). In order to maintain the inventory, contact information for permit holders, facilities, and responsible individuals is needed by NMFS. In addition to receiving information about marine mammal inventories, NMFS also provides periodic updates back to the holders and facilities so that the inventories can be verified. Use of this form will ensure that MMPA-required information is submitted in a consistent manner, that the NMFS inventory of captive marine mammals is accurate and up-to-date, and that holders and facilities can verify their inventories.

1. Please read all of the instructions before filling out this form. It is a computer generated form and will contain basic contact information for the facility and holder when complete.
2. If you are receiving this form for the first time or if it is being sent to you for updating, please fill out the appropriate blank sections (I, II, and/or III) in red.
3. The **Responsible Official** is the individual who is responsible for and who has the signatory authority for marine mammal custody decisions. The **Primary Contact** is the registrar or other person responsible for maintaining the marine mammal inventory records at the facility. The **Responsible Official** and the **Primary Contact** can be the same person, but should be noted in both Sections II and III. Please mail the this form to the address listed below.
4. All documentation required for this information collection is considered public information and as such, subject to the Freedom of Information Act (FOIA). No assurance of confidentiality is provided.

QUESTIONS? If you need assistance completing this form please contact the Permits Division at (301-713-2289) or write to us at:

**Permits, Conservation and Education Division - F/PR1
Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway, Room 13705
Silver Spring, MD 20910**

**Or by facsimile
at (301) 427-2521**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information including suggestions for reducing this burden, to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

MARINE MAMMAL NOTIFICATION (Continued)

V. CERTIFICATION

I hereby certify that this notice and any attached supplemental information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted in compliance with the Marine Mammal Protection Act of 1972 (MMPA) (16 U.S.C. 1361 et seq.), and regulations (50 CFR Part 216), and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001 or to penalties provided under the MMPA of 1972, as amended.

HOLDER:

RECEIVING FACILITY:

Signature of Responsible Person

Signature of Responsible Person

Name of Responsible Person

Name of Responsible Person

Title

Title

Facility Name/Company

Facility Name/Company

Street Address

Street Address

Mailing Address, if different

Mailing Address, if different

City/State/Zip Code

City/State/Zip Code

Phone Number

Phone Number

FAX Number (optional)

FAX Number (optional)

Email Address (optional)

Email Address (optional)

Primary Contact (if other than Responsible Person)

Primary Contact (if other than Responsible Person)

VI. PLEASE SUBMIT THIS NOTIFICATION AND ANY SUPPLEMENTAL INFORMATION TO:

Permits, Conservation and Education Division - F/PR1
Marine Mammal Inventory
Office of Protected Resources
National Marine Fisheries Service
1315 East West Highway, Room 13705
Silver Spring, MD 20910

OR

By Facsimile to (301) 427-2521

PLEASE NOTE: NOTIFICATIONS must be received at least 15 days before the date of transfer/transport.

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, search existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information to complete this form. Send comments regarding this burden estimate or any other aspect of this collection of information to the Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless the collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

NOTES

The Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 et seq.) requires that the National Marine Fisheries Service (NMFS) be given advance notification 15 days prior to the transfer/transport of most marine mammals (cetaceans and pinnipeds, except for walrus), and that the U.S. Fish and Wildlife Service (FWS) be given 15 days' advance notification of any walrus, polar bear, manatee sp., dugong, marine otter or sea otter. To ensure compliance with MMPA requirements, NMFS recommends persons transferring/transporting marine mammals submit this notification in the attached format (i.e., Marine Mammal Transfer/Transport Notification (MMTTN)). The NMFS receipt date is the start date of the required 15 days notification. NMFS will accept a transfer/transport notification by facsimile ONLY IF: (a) the facsimile transmitted is complete, signed and in the attached format; and (b) the original is forwarded to NMFS by express mail and received within three working days. If the marine mammals are listed as endangered or threatened under the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 et seq.) or subject to the Convention on International Trade in Endangered Species (CITES), permit and other requirements of the ESA and CITES must be met.

Persons exporting marine mammals must comply with the EXPORT requirements described on the back of this page. Permits are required for the IMPORTATION of marine mammals, for their CAPTURE from the wild, or for the RETENTION of rehabilitated beached and stranded marine mammals that have been determined releasable (i.e., in lieu of the release and re-capture of such marine mammals under a capture permit, a permit must be issued for their retention.) Permits are also required to obtain marine mammals for scientific research or enhancement purposes from captive stock, whether by transfer from another person/facility or by retention of non-releasable rehabilitated beached and stranded stock. Written authorization (not a permit) from NMFS is required to retain or obtain for public display purposes rehabilitated beached and stranded stock determined non-releasable (i.e., this required authorization is in addition to the 15 days' advance notification required for any transfer/transport). Requests for authorization to obtain or retain such marine mammals must be submitted to NMFS after the determination is made that release to the wild is not feasible and at least 15 days' before their transfer/transport or use for public display purposes.

A notice of receipt of permit applications is required by statute to be published in the Federal Register and applications and supporting documentation are available for review by the public at every stage of processing and during the life of the permit. The provisions at 50 CFR 216.33 implement these statutory requirements, and are referenced in and attached to the Application Instructions. All permit documentation including reports and the information required herein, is subject to the Freedom of Information Act (FOIA) with personal or sensitive information that is subject to the Privacy Act redacted when released under FOIA.

1. This is a planned or target date ONLY. Where a specific target date cannot be identified, a period of up to seven days may be identified instead (e.g., 1/4 - 1/11). Actual transfer/transport may occur on a different date but may not occur until at least 15 days following NMFS receipt of the transfer/transport notification.
2. "Holder" means a person (i.e., any individual or public or private entity) with permanent custody of the marine mammal to be transferred/transported. All marine mammal transports between facilities/location require notification regardless of whether such facilities are owned, operated or otherwise controlled by the same or different persons, or whether the transfer/transport is temporary or permanent.
3. The name of the holder/receiving holder need not be the same as the facility. The holder/receiving holder may be a person or corporate entity that owns/operates several facilities; or the holder/receiving holder may hold marine mammals in multiple facilities. In any case, and particularly in circumstances where the name of the holder/receiving holder is different from the facility, NMFS requests that the facility be identified.
4. "Receiving Holder/Receiving Facility" means a person (i.e., any individual or public or private entity) that is receiving the marine mammals to be transferred/transported. The receiving facility who obtains marine mammals for public display purposes must meet the three requirements of Section IV, including maintaining (i.e., owning, leasing or otherwise controlling) facilities at the receiving location for the public display of marine mammals.
5. Standards for education and conservation programs developed and endorsed by the American Association of Zoos and Aquariums (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance), representing approximately 60% of the U.S. marine mammal public display community, were published in the *Federal Register* on October 6, 1994 (59 FR 50900). Please call the Permits, Conservation and Education Division at the number below or write to the address listed in Section VI, if you would like a copy of this notice. If applicable, the AZA/Alliance standards may be referenced as the standards on which your education or conservation program is based by simply checking the applicable "box." However, please note that while these professionally recognized standards have been provided by the AZA and Alliance, they represent only two examples of such standards. Other professionally recognized standards of the public display community may differ from these examples. If your education or conservation program is based upon different professionally recognized standards of the public display community, please provide a copy of those standards. NMFS maintains a record of such standards for reference purposes only.
6. Please attach this documentation only if the standards or restriction on public access have changed or if your Exhibitor's License has changed or been renewed since your last submission of this information.
7. Principal Officer, Director, President or other person with responsibility for and authority to determine the disposition of the marine mammals involved.

QUESTIONS? If you need assistance in completing a Marine Mammal Transfer/Transport Notification, please contact the Permits, Conservation and Education Division at the address listed in Section VI or call us at (301) 713-2289.

EXPORTS

Foreign persons/facilities receiving custody of marine mammals by EXPORT from the United States must meet standards that are comparable to those applicable to persons transporting and receiving custody of marine mammals in the United States for purposes of public display, scientific research or enhancement. This means, for example, that export for scientific research or enhancement purposes requires issuance of a permit under the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.). However, marine mammals may be exported for public display purposes without an MMPA permit if either: the marine mammals to be exported are being held for public display purposes and the Holder and Receiving Holder/Facility submit a Marine Mammal Transfer/Transport Notification and comply with the export-specific requirements listed below; OR the marine mammals to be exported are being held for scientific research or enhancement purposes and NMFS authorizes the export of such marine mammals after the Holder and Receiving Holder/Facility comply with the export-specific requirements listed below. In the latter case, i.e., where marine mammals to be exported are being held for a purpose other than public display, NMFS may determine that a 30-day opportunity for public comment is necessary and, therefore, authorization must be requested at least 60 days in advance of such a proposed export.

Please note that the notification required for the export of marine mammals presently being held for public display must be accompanied or preceded by documentation meeting transfer/transport and export requirements, including a letter from the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) stating that the foreign facility concerned meets standards comparable to those applicable to U.S. licensees and registrants under the Animal Welfare Act (7 U.S.C. 2131 et seq.). Similarly, NMFS must receive an APHIS comparability determination before authorizing the export of marine mammals presently being held for purposes other than public display; i.e., marine mammals being held for scientific research or enhancement purposes or non-releasable marine mammals from rehabilitated beached and stranded stock. To make this MMPA-required comparable standards determination, the foreign Receiver must submit sufficient documentation to APHIS on which to base such a determination, or be inspected by an APHIS inspector or other person designated by APHIS at the expense of the importer or exporter. When documentation is submitted, the foreign government involved must certify its accuracy. Please contact Animal Care, APHIS, Riverdale, MD 20737 (301-734-7833) for guidance concerning documentation or inspection options.

Subsequent transfer/transport of exported marine mammals, or their progeny, between foreign holders of such marine mammals must adhere to the above requirements. Foreign transfer/transport notifications must be submitted to NMFS through the appropriate agency of the foreign government (e.g., the Convention on International Trade in Endangered Species (CITES) management authority). A Marine Mammal Transfer/Transport Notification must be submitted at least 15 days before the transfer/transport of exported marine mammals between facilities located in the same country. Before exported marine mammals are transported/exported to another foreign country, the Shipper and Receiver must submit a Marine Mammal Transfer/Transport Notification AND the government of the foreign Receiver must submit the certification statements listed below. Although an MMPA permit may not be required for public display exports, any person exporting or importing protected species, including marine mammals, must comply with other applicable U.S. law and may need to obtain a CITES permit. Information concerning CITES permit requirements is available from the Office of Management Authority, U.S. Fish and Wildlife Service, U.S. Department of the Interior, 4401 North Fairfax Drive, Room 420, Arlington, VA 22203 (703-358-2104).

In summary, to export marine mammals for purposes of public display:

The foreign Receiver must:

- (1) Offer an education or conservation program comparable to one that is based on professionally recognized standards of the U.S. public display community;
- (2) Meet standards comparable to the requirements that a person in the United States must meet to be registered or be issued a license under the Animal Welfare Act (7 U.S.C. 2131 et seq.); and
- (3) Maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee.

AND

The appropriate agency of the foreign government (e.g., the Convention on International Trade in Endangered Species (CITES) management authority of the government) must submit a statement certifying that:

- (1) The information submitted concerning the foreign facility is accurate;
- (2) The laws and regulations of the government involved permit that government's enforcement of requirements equivalent to the requirements of the U.S. Marine Mammal Protection Act (MMPA) and Animal Welfare Act (AWA), and that government will enforce such requirements; and
- (3) If it is determined that the foreign facility involved has acted in a manner inconsistent with a requirement of the MMPA or the AWA that would be applicable if the foreign facility were a U.S. facility, the government concerned will afford comity to an enforcement decision that may be made by NMFS, including seizure or arrangements for other disposition of marine mammals exported from the United States and the progeny of such marine mammals and the recovery of expenses for such seizure or other disposition.

All three certification statements are required by NMFS to ensure compliance with MMPA requirements. APHIS requires only that the accuracy of the information be certified as a prerequisite for making a comparability determination.

PRA Justification – Public Display Forms

Marine Mammal Transport Notification – Under the 1994 Amendments, a special exception permit or other NOAA Fisheries authorization is no longer required for the transport, transfer, or export of marine mammals for purposes of public display. Provided the intended recipient meets the three public display criteria specified at Section 104(c)(2) of the MMPA, a holder of captive marine mammals for public display purposes need only provide NOAA Fisheries with notification at least 15 days in advance of the proposed transport, export, sale or other transfer of custody. To ensure compliance with this statutory requirement and in conduction with ongoing efforts to reduce and streamline reporting requirements, NOAA Fisheries prepared and implements a Marine Mammal Transport Notification (MMTN). The MMTN requires the recipient to certify compliance with the three criteria at Section 104(c) of the MMPA, and attach supporting documentation of this unless this information has been previously submitted. The current holder (*i.e.*, the shipper) must identify the marine mammals to be transported and certify the accuracy of the information provided. The notification has been designed so that holders of marine mammals may also use it to notify NOAA Fisheries of exports for purposes of public display. The information provided on this form allows NOAA Fisheries to maintain an updated inventory of captive marine mammals on public display (MMPA section 104(c)(10)), to ensure that mandated criteria are met for public display (MMPA section 104(c)(2)), and to uphold requirements for exports (104 (c)(9) and 50 CFR 216.33(b)).

Marine Mammal Data Sheet – Section 104(c)(10) of the MMPA, as amended, directs the Secretary to establish and maintain an inventory of captive marine mammals and their progeny. Public display permit holders and other persons who maintain captive marine mammals must notify NOAA Fisheries within 30 days of captive births and deaths along with other inventory changes/disposition (*e.g.*, transfers, sales). NOAA Fisheries maintains an automated Permit Program Information Management System (PPIMS) database of permit tracking information, as well as inventory information for over 7000 captive marine mammals, including identification numbers, locations, species, birth dates, transfer dates, and other information. To simplify compliance with the statutory requirements and to ensure consistency of the submissions, NOAA Fisheries developed and implements a Marine Mammal Data Sheet (MMDS) to be used to report changes in a holder's inventory, such as births and deaths. The information requested on the MMDS is the items specified in Section 104(c)(10) of the MMPA and correspond directly with the database fields in the PPIMS inventory system.

Once the initial inventory information for section II of the MMDS has been provided, it does not change. Regardless of the number of transports or transfers of a specific marine mammal, the database generates and updated MMDS, which is provided to the holder to be used to report future updates. Section IV (Disposition) of the MMDS remains blank until the holder reports a transfer (sale), export, transport, death, or release of the animal. When the holder uses the MMDS, it eliminates the need for the respondent to prepare a formal letter and it ensures accurate animal identification.

Person/Holder/Facility Sheet – Periodically, NOAA Fisheries submits to each public display holder, and to others maintaining captive marine mammals, a Person/Holder/Facility Sheet (PHF Sheet) and a Marine Mammal Inventory Report-Summary (MMIRS) by holder and species listing the marine mammals in their collection. The PHF Sheet is computer-generated and contains the name and contact information of the individual responsible for and has the signatory authority for marine mammal custody decisions. The primary contact is the registrar or other person responsible for maintaining the inventory records at the facility, and with whom NOAA Fisheries corresponds with if questions or issues regarding the inventory arise. Updates to the PHF and MMIRS ensure compliance with maintaining an accurate inventory.

Inventory and other public display reports provide NOAA Fisheries with information that is frequently requested and used by other agencies (*e.g.*, for the Marine Mammal Commission Annual Report to Congress) and by the general public, and to monitor compliance with permit take requests. Facilities permitted to hold marine mammals are custodians of the animals, subject to the public interest of the citizens of the U.S.

PRA Information Collection Justification - Application Instructions for Scientific Research and Enhancement Permits and Reports

I. TITLE OF APPLICATION – 50 CFR 216.33 and 222.308(b)(1). Self explanatory; identifies type of permit requested and statutory requirement(s).

II. DATE OF APPLICATION – 50 CFR 216.33 and 222.308(b)2). Self explanatory.

III. APPLICANT AND PERSONNEL

- A. Applicant/Permit Holder, Principal Investigator, Co-investigator(s), and other Personnel Directly Involved in Taking** – 50 CFR 216.33, 216.35(i), 216.41(a), 216.41(c)(1)(iii-iv), and 222.308(b)(3). Necessary for identification and contact purposes. A Permit Holder is ultimately responsible for all activities of individuals operating under the permit. The Principal Investigator and Co-investigators share this responsibility in the absence of the Permit Holder. These persons will be named on the permit as responsible for the authorized activities and are subject to enforcement actions. Personnel involved in the authorized activities must be reasonable in number and limited to those individuals who perform a necessary function and support personnel included for purposes of training or as back up. Special exception permits are not transferable.
- B. Qualifications and Experience** - 50 CFR 216.34(a)(5-6), 216.35(f-h), 222.308(b)(6)(vi), and 222.308(b)(8)(v), 222.308(c)(11). Necessary to determine whether the individuals operating under the permit are qualified to successfully accomplish the objectives and/or conduct bona fide research, carry out the specific types of take, and properly care for and maintain captive animals (as applicable). Individuals conducting activities authorized under a permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications. Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed.

IV. PROPOSAL

A. Summary - 50 CFR 216.33(d) and 222.303(b). NOAA Fisheries is required to publish notice of receipt of an application in the Federal Register. To ensure that an accurate summary of the application is published, applicants are requested to include a short abstract of the request.

B. Introduction

- 1. Status of the Species** - 50 CFR 216.33(c)(2)(iii), 216.34 (a)(7), 216.36 (a)(i), 216.41(b)(6), 222.308 (b)(6)(i and iv), and 222.308(c)(5). NOAA Fisheries must determine (1) that for enhancement purposes, the species or stock identified in the

application is in need of enhancement for its survival or recovery and only animals and parts necessary for enhancement are taken; and (2) any requested import or export will not result in taking of marine mammals beyond that authorized by the permit. Permits must specify the species authorized to be taken. This information is also needed for assurance that the applicant is applying for a permit under the correct Act, that the applicant is aware of any necessary consultation under the ESA, and that any import/export requirements will be met with regard to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Applicants were previously required to also include a written summary of the status of the species, including population estimates and factors affecting survival, which in some cases required up to a page of text. We have eliminated this requirement in this 2006 revised permit application since NOAA Fisheries is responsible for managing these species and for conducting most population censuses and the information is available on NOAA Fisheries web sites. Thus, we have eliminated some burden on the respondents.

2. **Background/Literature Review** – The applicant must demonstrate whether the proposed activities are different from or build upon past research; whether the activities are unnecessarily duplicative and thus may operate to the disadvantage of the species; or whether the activities are necessary and would contribute to the conservation of the species. This information will be used with other components of the application to determine that the proposed activity will further a bona fide scientific research or enhancement purpose (50 CFR 216.41(b)(1) and 222.308(c)(4)).
3. **Hypothesis/Objectives and Justification** - 50 CFR 216.34(a)(3) and 216.41(b); 222.308(b)(4-5), 222.308(b)(10), and 222.308(c)(4). The applicant must indicate the hypothesis being studied (for research) and the purpose of the proposed enhancement; justify the need for use of a depleted, threatened, or endangered species and any lethal taking or permanent removal of animals from the wild, as applicable; indicate that the activity is consistent with a conservation or recovery plan and that any enhancement will contribute to the recovery of the species; and justify the number of animals to be used and the need to subject animals to pain or suffering. For ESA-listed animals, the applicant must demonstrate that the proposed activities are consistent with the purposes and policies set forth in section 2 of the ESA. This section meets regulatory (cited above) and statutory requirements (MMPA 104(c) and ESA section 10(a)(1)(A)).

C. **Methods**

1. **Duration of the Project and Locations of Taking**

Duration – 50 CFR 216.35(b), 216.36(a)(iv), and 222.308(b)(5)(i), (b)(6)(iii).

Permits specify the period during which the permit is valid. This also provides a basis to determine whether it is likely that the objectives will be met during the

time allotted with the available resources; when the permit is needed (start date); and to determine potential cumulative impacts from researchers working on the same species/location at the same time and any necessary research coordination.

Location – 50 CFR 216.36(a)(iii) and 222.308(b)(6)(iii) and (d)(2). Permits must include conditions specifying the locations of the authorized take. Species in different locations may have special vulnerabilities (e.g., calving grounds) and the same activity may have a different impact in a certain location during different seasons. NOAA Fisheries must evaluate potential impacts of the proposed activities on the listed species, including cumulative impacts as mentioned above. This information is also used in NEPA analyses and ESA section 7 consultations, as necessary.

2. Types of Taking, Methodology Involved, and Numbers of Animals that would be Taken (in the wild or in captivity)

50 CFR 216.34, 216.36(a)(i-ii), 216.41(b), 216.37 (a-c); 222.308(b)(4)(ii), (b)(5)(v), (b)(6)(ii) and (b)(6)(v); 222.308(c); 222.308(d).

Take table and narrative description: In addition to the regulatory citations above, section 104(b) of the MMPA also requires permits to specify the number and kind of marine mammals authorized to be taken, the manner and location of the taking, and the period of validity for the permit. Also, under Section 104(c)(1) of the MMPA requires permits to specify the methods of capture, supervision, care and transportation and that the taking is consistent with the purposes of the MMPA. Section 104(c)(3) of the MMPA requires applicants for scientific research permits to submit information indicating that the taking is required to further a bona fide scientific purpose. NOAA Fisheries must also determine that the proposed method of taking is humane and will not present any unnecessary risks to the health and welfare of marine mammals; and that the proposed activity by itself or in combination with other activities, will not have a significant adverse impact of the species or stock.

Import/Export requirements: 50 CFR part 14; 216.33(e)(6), 216.35(c-d), 216.36(a)(1)(iii), 216.37, 216.41(c)(v). NOAA Fisheries must determine that marine mammals or their parts to be imported are taken humanely and in compliance with the Acts. To satisfy this requirement NOAA Fisheries needs to know the country in which the taking will occur, how the taking will be conducted and the marine mammal management program/legal authority of the country of taking. Any marine mammal part imported must not have been obtained as a result of lethal take inconsistent with the Acts unless authorized by the Office Director. An exception to certain restrictions in the Acts on the export or import of protected species is provided if the import or export is necessary to benefit the health or welfare of the protected species concerned. This information is essential for NOAA Fisheries to make a determination as to whether this

exception is applicable.

Regulations under the ESA require the applicant to provide a detailed description of how the species will be used in order to determine whether the permit will operate to the disadvantage of the species, will further a bona fide and necessary research or enhancement purpose, and will be conducted in a humane manner. Standardized and safe protocols should be followed for handling a listed species. Also, permits must specify the number and kind of species covered, and the location and manner of take.

NOAA Fisheries must conduct an appropriate NEPA analysis, which requires a description of the proposed action; and as required, conduct section 7 consultations under the ESA, which also require detailed descriptions of the proposed actions.

3. Additional Information for Removing Animals from the Wild into Captivity and Research or Enhancement on Captive or Rehabilitating Animals

(a) Why removal from the wild is necessary and why suitable animals cannot be obtained from captive or rehabilitated stock.

216.27(b)(4), 216.41(b)(3) – NOAA Fisheries regulations allow for the use of stranded rehabilitated marine mammals for scientific research purposes in lieu of taking animals from the wild. This protects wild stocks from impacts of removing individuals from the population. 216.41(b)(3) – Any permanent removal of a marine mammal from the wild must be consistent with any applicable quota established by the Office Director. 222.308(b)(4) – Applicants must justify the need for use of an endangered species and whether an alternative species can be used.

(b) Description of transport methods.

216.34(a)(6) and 216.41(a)(2) – If a live animal will be held captive or transported, NOAA Fisheries must determine that the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal. 222.308(b)(7) - NOAA Fisheries needs to ensure that the listed species will be transported by appropriate methods and by qualified persons to ensure the welfare of the animal.

(c) Name and location of the rehabilitation facility (for marine mammals only).

216.36(a)(iii) – See section C.1. above. Also, NOAA Fisheries needs this information to ensure authorization needed under 50 CFR 216.27(c) has been obtained as it relates to the disposition of rehabilitated marine mammals for special exception permit purposes. This question is not applicable to ESA-listed species (research on sea turtles in rehabilitation would require a USFWS permit; no other non-mammal ESA-listed species is rehabilitated).

- (d) Name and location of the facility and identify the animals, for captive stock.** 216.36(a)(iii); 222.308(b)(6)(iii) and (d)(2) – See section C.1 above. Also used for marine mammal inventory purposes.
- (e) Copy of APHIS license or registration and inspection reports (for marine mammals only).**
216.41(a)(2) - The Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) is responsible under the Animal Welfare Act (AWA) for captive marine mammals and has established regulations and standards, "Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals" (9 CFR Part 3, Subpart E). Most U.S. facilities maintaining marine mammals are required to be licensed or registered by APHIS. Researchers do not need to comply with APHIS standards on the care and welfare of marine mammals held in captivity if their research protocol justifies a variance from the standards and if the research institute's animal care specialists verify that the variance is necessary to carry out the research. Registered facilities must identify themselves, any variances, and state whether the facility can hold the requested animals. Applicants must furnish supporting documentation regarding the facilities' compliance with these standards before any permit involving captive maintenance can be issued. All of this information is necessary for NOAA Fisheries to determine whether applicable and/or comparable care and maintenance standards are or will be met, and whether the taking is humane. See 216.41(6)(v)(C) for enhancement requirements.
- (f) Written statement from the responsible veterinarian or expert.**
See (e) above for marine mammals. 222.308(b)(8)(vi) – written certification needed to satisfy 222.308(c)(6).
- (g) Describe the care and maintenance of the animals.** 216.41(a)(2) and 222.308(b)(8) - needs to ensure that any species to be held in captivity will be maintained at appropriate facilities and will be cared for in a safe, humane, and acceptable manner.
- (h) Whether a captive breeding program will be established.** 216.41(b)(6) and 222.308(b)(9)– necessary to justify and explain enhancement programs.
- (i) Disposition of animals at the termination of activities.** Necessary for NOAA Fisheries to determine if animals will be euthanized, released, transferred to another disposition (e.g., public display), or kept in a long-term research program, and permit accordingly.
- (j) Release to the wild.** This information is necessary to ensure that any release of captive animals to the wild will not cause harm to or jeopardize the wild

population in any way. 216.35(e) - A scientific research permit is required for the release of captive marine mammals.

4. Lethal Take - 50 CFR 216.41 (b)(2) and (c)(1)(v) and 222.308(b)(4)(ii) - This information is necessary to ensure that the prohibitions and restrictions of the Acts on the lethal take of protected species are taken into consideration.

5. Special considerations for Applicants working abroad (exports of marine mammals): 50 CFR 216.33(b).

Section 104(c)(9) of the MMPA states, "No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit...". Information is needed to assess the ability of the foreign applicant to conduct activities within the parameters comparable to those that a U.S. entity would to be consistent with U.S. law. NOAA Fisheries must rely on independent evidence upon which to base a conclusion as to the reliability of statements concerning information set forth by foreign applicants in their applications as well as independent evidence that the government having jurisdiction over the facility has the appropriate laws and regulations to ensure compliance with permit conditions (and will do so), and will provide NOAA Fisheries with essential reports. Therefore, no application from for export will be considered unless all of the certifications at §216.33(b) are provided.

The applicant is required to submit this information to ensure that (1) applicable law is met, whether it is U.S. or foreign and (2) that protected species taken (including held captive) in a foreign country are not taken in an inhumane manner because of the less-protective laws of a foreign country.

D. Resources needed to accomplish objectives - 216.34(a)(5); 222.308(b)(5)(ii-iii) and (b)(6)(vii) - This information ensures that the applicant has adequate resources to carry out he proposed activity.

E. Effects of the Research and Measures to Minimize Stress, Pain, Suffering, and/or Harassment - 50 CFR 216.33(c)(v) and (d)(i and iv); 216.34(a)(4); 216.41(b)(4); and 222.308(c)(2) and (5) – In addition to requirements under the MMPA and ESA, under the National Environmental Policy Act, NOAA Fisheries must assess the effects, both individually and cumulatively, of permitted activities. This information will be used to determine whether the categorical exclusion for permits is appropriate or if an environmental assessment or impact statement is required. The information is also required to determine the humaneness of the take and for any necessary ESA section 7 consultations.

F. Publication of Results - 50 CFR 216.41(c)(ii) - This information is essential for NOAA Fisheries to determine that the research meets the definition of *bona fide*, as defined at 50 CFR

216.3.

V. National Environmental Policy Act Considerations - 216.33(c) and 40 CFR 1508.27 (b)

This information is used along with information on the types of activities proposed and their effects on animals in determining the potential impacts on the environment, as required under NEPA.

VI. Previous and Other Permits - This information ensures that permits are not issued to applicants that are not in full compliance with the terms and conditions of existing permit(s). Applicants holding previously issued scientific research and enhancement permits are expected to report progress on that research annually (see Reports below). Annual reports also allow NOAA Fisheries to monitor numbers of animals taken. Proof of compliance with other applicable Federal and state laws is required before a permit will be issued.

VII. References – self explanatory. Allows NOAA Fisheries to obtain reference material as needed for required analyses, as well as verify the applicants cited literature.

VIII. Certification and Signature - 50 CFR 216.33(a), 216.33(e)(4)(i); 222.302(a), 222.308(b)(12-13), and 222.308(c)(1) - Applicants must certify that the information in the application is accurate, under penalties of the ESA and MMPA. Permits must be applied for in good faith. Also required by 18 U.S.C. 1001.

REPORTS - 50 CFR 216.27, 216.38, 216.45; 222.301(h) and 222.308(b)(11).

Section 104(c) of the MMPA requires "...any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock [to] furnish to the Secretary a report on all activities carried out by him pursuant to that authority." The provisions promulgated at 50 CFR 216.38 and 222.301(h) require permit holders to submit reports in accordance with the requirements established in their permits.

Reports are of several types and may be submitted annually or on occasion. For scientific research and enhancement permits, the annual report is a summary of all research and enhancement activities conducted during the year. Annual reports are necessary for NOAA Fisheries to determine that the permit holder is abiding by the conditions of the permit and to track numbers of animals taken and the effects of the authorized take on the species. Reports are also necessary to determine whether the permitted research or enhancement activities met stated objectives and an indication of where and when the research findings were published or otherwise made available to the public or scientific community

APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR
PERMITS
UNDER THE
MARINE MAMMAL PROTECTION ACT
FOR
PUBLIC DISPLAY

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Permits, Conservation and Education Division, F/PR1
Office of Protected Resources
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910-3226
Tel: (301) 713-2289
Fax: (301) 427-2521
Web site: <http://www.nmfs.noaa.gov/pr/>

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**APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR PERMITS UNDER THE
MARINE MAMMAL PROTECTION ACT
FOR PUBLIC DISPLAY**

INTRODUCTION

The Marine Mammal Protection Act of 1972 (MMPA) places a moratorium, with certain exceptions, on the taking and importing of marine mammals and marine mammal products. One exception provides for the issuance of permits by either the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS), depending on the species involved¹, to take² marine mammals for purposes of scientific research, public display, enhancing the survival or recovery of a species or stock, or educational or commercial photography. NMFS and USFWS regulations implementing the permit provisions of the MMPA can be found at 50 CFR Part 216 and 50 CFR Part 18, respectively.

Public display permits are required for the capture of marine mammals in the wild, importation of marine mammals, or retention of releasable stranded marine mammals for purposes of public display. Public display permits are not issued for depleted species under the MMPA and species listed as threatened or endangered under the Endangered Species Act (ESA).

A permit is not required to hold marine mammals for the purpose of public display. Public display of marine mammals is based on three criteria (Section 104(c)(2)(A) of the MMPA). Facilities holding and maintaining marine mammals for public display purposes must: (1) offer a program of education or conservation that is based on professionally recognized standards of the public display community; (2) be registered or hold an exhibitor's license, issued by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS), under the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*); and (3) maintain facilities that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee.

Permits are not issued for the exportation of marine mammals for public display. The receiving holder/facility must meet standards that are comparable to those applicable to domestic facilities and/or permit holders under the MMPA, and the appropriate agency of the foreign government must submit a statement certifying that: (1) the application is accurate; (2) the laws and regulations of the

¹NMFS has management authority for cetaceans (whales and dolphins) and pinnipeds (except walruses). USFWS has management authority for sea and marine otters, polar bears, walruses, manatees, and dugongs.

²Under the MMPA, the term "take" is defined as: *To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.*

government involved have equivalent provisions to the MMPA and AWA, and that such laws will be enforced; and (3) the government will provide comity to requests made by NMFS (*e.g.*, requests to enforce the requirements of the MMPA or comparable laws with respect to the facility).

A stranded marine mammal that has been classified as non-releasable may be held for the purposes of public display without a permit and in accordance to the three public display criteria (50 CFR 216.27). A permit is required to hold a releasable beached/stranded marine mammal in captivity for any purpose, including public display.

Species lists and information on the status of species under the MMPA, ESA, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are available by calling the Permits, Conservation and Education Division or on the following web site: http://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm

Activities/Species for Which These Instructions Apply

These permit instructions provide the format for preparing applications for public display permits for the following:

- marine mammal species under NMFS jurisdiction that are not listed as depleted under the MMPA or threatened or endangered under the ESA;
- first time imports of captive animals for public display in the U.S.;
- captures of animals in the wild in the U.S. for public display purposes; or
- retention of a releasable stranded animal for public display purposes.

These application instructions are also available as a PDF or Microsoft Word document from the NMFS Office of Protected Resources web site: <http://www.nmfs.noaa.gov/pr/>.

If the proposed public display activity includes species under the jurisdiction of both NMFS and USFWS, a joint permit from NMFS and USFWS is required. If the proposed public display activity involves only species under the jurisdiction of USFWS, a permit from USFWS must be requested (See section below, “Guidelines for Preparing Your Application”).

For information on applying for permits to conduct other types of activities (*e.g.*, commercial or educational photography, scientific research, enhancement) involving the taking of marine mammals or endangered or threatened species under the MMPA or ESA, please see Appendix IV and NMFS’ web sites: www.nmfs.noaa.gov/pr/permits/ and <http://apps.nmfs.noaa.gov/index.cfm> .

Guidelines for Using These Instructions

If you have any questions concerning the preparation of your application, please contact the Permits, Conservation and Education Division (Permits Division) at (301) 713-2289.

When to Apply – Processing of an application usually requires at least three months from submission of a *complete* application, including a mandatory 30-day public comment period. *We strongly recommend that you submit an application at least six months in advance of your proposed activities.* Often, public comments must be addressed, which can increase processing time. For captures from the wild, contact the Permits Division for guidance on when to apply and additional processing time required for any analyses required under the National Environmental Policy Act.

Give Complete Information – The permit processing “clock” does not begin until the Permits Division has determined that an application is complete. An application must be considered complete before the Permits Division can publish a Notice of Receipt in the *Federal Register*, which initiates a 30-day public comment period. As part of the review process, the completed application is also forwarded to the appropriate NMFS Region(s) and to the Marine Mammal Commission (<http://www.mmc.gov/>) for review and comment.

Incomplete applications cannot be processed. NMFS may return incomplete applications or request additional information from an applicant. If the requested information is not received within 60 days of the request, the application will be returned. Therefore, please provide complete and specific information according to the instructions. To expedite processing, when a question does not apply, please indicate “Not Applicable” (N/A) and provide a brief explanation as to why not.

You are encouraged to contact the Permits Division with any questions in advance of submitting an application. It is often helpful to draft an application and send it to NMFS Permits Division for preliminary review. If possible, please send the draft electronically (contact the Permits Division for a current e-mail address) to save on paper and postage. Permits Division staff will review your draft application and assist you in ensuring that it is complete. Once the application is complete, a signed copy of the application should be mailed to the Permits Division at the address listed below.

It is important that all applications conform to the instructions provided. Applications that do not adhere to the following requirements for content and format will be considered incomplete and may be returned to the applicant or will result in processing delays if the applicant needs to be contacted for additional information. To facilitate review, information should be presented in the designated categories/headings, and in the order listed. Use of additional subheadings to clarify the application may be added at the discretion of the applicant. Line spacing, font size and style are at the discretion of the applicant, but the application must be readily legible. We suggest Times New Roman 12 pt font. Do not submit bound applications.

Where to send your application - Submit a signed original and one hard copy of the

application to the Chief, Permits, Conservation and Education Division, Office of Protected Resources, 1315 East-West Highway, F/PR1 Room 13705, Silver Spring, Maryland 20910-3226. All applications must also be accompanied by an electronic copy (in Word, WordPerfect, or PDF), which can be included on a 3.5" disk or CD, or sent as an email attachment.

Current or Previous Permit Holders – If you currently hold or have held a NMFS permit in the past, a new application cannot be processed until all reports required to date under those permits have been submitted and determined to be complete and in compliance with reporting requirements.

Permit Amendments – Requests for amendments to permits should address all applicable sections of these instructions, including a detailed description of the proposed changes. Amendment requests involving an increase in number or changes of location or species are subject to a 30-day public review and are granted or denied at the discretion of the Director, Office of Protected Resources. Minor changes not involving numbers, species, or locations may be authorized at the discretion of the Director without public review. To request an amendment, send the application to the Chief, Permits, Conservation and Education Division.

Permit Fees – Section 104(g) of the MMPA and 50 CFR Section 222.308 (for ESA species) provide the authority to establish and charge a reasonable permit fee; however, there is no fee at this time.

USFWS Permits – Application instructions for sea turtles on land and marine mammal species under USFWS jurisdiction can be obtained by calling the USFWS Division of Management Authority at (800) 358-2104 or by visiting the Service's web site at <http://permits.fws.gov/>.

CITES Import/Export Permits – U.S. regulations require that imports or exports of wildlife or parts thereof listed in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)¹ be accompanied by the proper CITES permit or documentation (50 CFR 23). This is in addition to the required permit under the MMPA.

The USFWS Division of Management Authority (see telephone number and web site, above) is responsible for implementing CITES. The CITES status of threatened and endangered species and marine mammals under NMFS and USFWS jurisdiction is indicated on the following web site: <http://www.cites.org/>. If your activities will involve import or export of wildlife (including tissue samples or other parts), you are responsible for securing a CITES permit from USFWS as necessary.

¹ CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between Governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES works by subjecting international trade in specimens of selected species to certain controls. All import, export, re-export and introduction from the sea of species covered by the Convention has to be authorized through a licensing system.

INSTRUCTIONS

I. Title of the Application

Example: “Application for a Permit for Public Display Under the Marine Mammal Protection Act.”

II. Date of the Application

III. Applicant

State the applicant’s complete name, address, telephone number, fax number, e-mail, and institutional affiliation, if any. If the Applicant is a partnership or corporation describe the business. In addition, state the same contact information of the Holder, Primary Contact, and Responsible Official (see Attachment I for definitions of these terms) if different from the Applicant.

IV. Description of the Marine Mammals and the Proposed Activity

A. Statement of Work

Provide a brief summary, not more than 200 words, of the proposed activity. This summary will be published in the *Federal Register* Notice of Receipt for a 30-day public comment period. The summary should include concise statements of the following information:

- Purpose of the activity;
- Target species (both common and scientific names);
- Type and manner of take or import;
- Numbers of animals to be taken, by species, for each activity (over a specified time, *e.g.*, per year);
- Numbers and kinds of non-target marine mammal and ESA-listed species that may be taken incidentally during proposed activities;
- Specific geographic location(s) of the take, including locations from which animals will be imported; and
- Requested period of the permit².

² Note that permits are issued for up to a five-year period.

B. Summary of Marine Mammals to be Taken or Imported

List the target species (common and scientific names) and, as applicable, the subspecies, population group and range that may be taken or imported.

For takes in the wild, list any non-target species, including but not limited to, marine mammals, reptiles, sea birds, sharks, etc., and any ESA-listed species (plant or animal) that may occur in the capture area, and therefore, may be taken (*e.g.*, disturbed, harassed, or injured) incidentally during the course of your proposed activities. Include any USFWS species that may be incidentally taken.

Indicate the status of each species or stock as determined under the MMPA (depleted, strategic), ESA (threatened or endangered), and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Appendix I, II, or III) as applicable. Species information is available at:

<http://www.nmfs.noaa.gov/pr/species/>

<http://www.nmfs.noaa.gov/pr/sars/>

<http://www.fws.gov/>

<http://www.cites.org/>

C. Description of the Proposed Activity

1. Give the dates and locations of the proposed taking or import. Dates and locations should be identified as specifically as possible, including ports of entry (see attached list).
2. State the proposed duration of the permit.
3. Indicate the types of taking involved, (*e.g.*, capture; import). Clearly indicate the number, estimated or known age, size, sex, and reproductive condition of the marine mammals that will be taken or imported. If applicable, please include the animal's identification number. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal.

D. If Marine Mammals are to be Collected from the Wild

1. List the names, if other than the Applicant, and qualifications of the personnel who will capture the animals.
2. Provide a written certification from the attending veterinarian responsible for the animals during and immediately after capture that the methods of capture and post-capture care will be adequate to ensure the well-being of the animals.
3. Give a detailed description of the manner of capture, including gear to be used. Describe the techniques and equipment to be used to approach, capture, and restrain; for example, indicate: (a) any drugs or other substances to be used, including the name, dosage, and method of administration; and/or (b) the method of capture and restraint.
4. Describe the pen, tank, container, cage, cradle, or other device used post-capture and thereafter during transportation to the initial holding facility.
5. Describe the mode of transportation, special care during transport, and the length of time required for the transfer from the capture site to the initial holding facility.
6. Provide any alternatives to the proposed manner of taking or importation, and state why the proposed method is considered humane.
7. In addition, if a captive stock of the species concerned is available, the applicant must explain why the animals cannot be obtained from such captive stock.
9. If an animal may be determined to be unsuitable for public display, give details regarding the specific protocol for return to the wild.

E. Effects of the Proposed Activity

Describe the effects of the proposed taking or import, by itself or in combination with other known or suspected takings or imports, on: (a) the individual animals concerned (*e.g.*, describe how the proposed activity will affect the individual's behavior, physiology, etc.); (b) the relevant species or stock (for takes from the wild, describe what impacts there will be from removal of individuals from the population and from incidental disturbance); (c) the human environment (*e.g.*, describe how your actions will affect the general public; describe what measures are in place to ensure human health and safety during the proposed activities); and (d) the marine ecosystem (for takes from the wild, indicate if you will be incidentally taking non-target species, etc.). The description must be sufficiently detailed to enable the preparation of any documentation required under the National Environmental Protection Act (NEPA) (*e.g.*, an environmental assessment (EA), environmental impact statement (EIS), or documentation to support a determination that the conduct of the activity is categorically excluded from the requirement to prepare an EA or EIS). Contact

the Permits Division for guidance on completing this section and to determine what level of NEPA analyses will be required.

F. If Marine Mammals are to be Imported into the U.S.

1. Provide the names and qualifications of the personnel who will accompany the animals during import.
2. Describe the pen, tank, container, cage, cradle or other device used during import and thereafter during transportation to the initial holding facility.
3. Describe the mode of transportation, special care during transport, and the length of time required for the transfer from the foreign facility to the initial holding facility in the United States.
4. Submit a written certification from the attending veterinarian responsible for the animals during import that the methods of import and post-import care will be adequate to ensure the well-being of the animals.
5. Name the country of exportation (*i.e.*, the country from which the marine mammal is to be imported into the United States) and the country of origin (country from which the animal was originally taken from the wild or where born in captivity) if different from the country of exportation.
6. Describe how the marine mammals were taken in the country of origin. Permit holders may not capture or import a marine mammal that is pregnant, lactating, or either unweaned or less than 8 months old, whichever comes later, unless the Office Director determines that such capture or importation is necessary for the protection and welfare of the animal. If the marine mammal was subsequently exported to a country different from the country of origin, cite the dates, the manner and circumstances under which it was imported into the country of exportation.
7. Submit a statement and, to the extent practicable, documentation concerning whether the marine mammal to be imported was captured and is presently being held in compliance with the laws of the country of exportation.
8. Provide a statement whether taking of marine mammals will occur in order to replace the marine mammals to be imported, or whether the proposed import will result in an increased demand for marine mammals.
9. If the import is necessary for the protection or welfare of the marine mammals, discuss the circumstances involved and any alternatives considered.

V. Export Requirements

A permit is not required for the export of marine mammals for public display purposes if the marine mammals to be exported are held legally for public display in the U.S. However, such exports must meet standards comparable to those applicable to the transport of marine mammals between U.S. facilities according to the MMPA. These requirements are listed below.

- A. Foreign applicants that intend only to export from the U.S. marine mammals for the purposes of public display must meet the following requirements:
 1. Offer an education or conservation program comparable to one that is based on professionally recognized standards of the U.S. public display community.
 2. Meet standards comparable to those a person in the U.S. must meet to be issued a license under the Animal Welfare Act (7 U.S.C. 2131 *et seq.*).
 3. Maintain facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than charging an admission fee.
- B. The appropriate agency of the foreign government (*e.g.*, the CITES management authority of the government) must submit a statement certifying that:
 1. The information submitted concerning the foreign facility is accurate.
 2. The laws and regulation of the government involved permit that government's enforcement of requirements of the U.S. Marine Mammal Protection Act and the Animal Welfare Act, and that government will enforce such requirements.
 3. If it is determined that the foreign facility involved has acted in a manner inconsistent with MMPA or the AWA, that would be applicable if the foreign facility were a U.S. facility, the government concerned will afford comity to an enforcement decision that may be made by the U.S. National Marine Fisheries Service, including seizure or arrangements for other disposition of marine mammals exported from the U.S. and the progeny of such marine mammals and the recovery of expenses for such seizure or other disposition.

VI. General Requirements for Public Display

- A. Names and addresses of the facility(ies) where the marine mammals to be imported or captured will be maintained. Indicate hours of operation and cost of admission. (Attach copies of facility brochures or public notices advertising this information, if available.)
- B. License (attach a copy) or registration number issued under the Animal Welfare Act by the Department of Agriculture's Animal Plant and Health Inspection Service (APHIS).
- C. Specify the professionally recognized standards of the public display community upon which the education or conservation program offered by the applicant is based³, and provide a general description of the program offered for reference purposes.

VII. Previous Permits

- A. If issued previous permits for the taking, import, or export of marine mammals and a final report has not yet been submitted, ensure that all required reports to date have been submitted.
- B. If applicable, provide the names and addresses of cooperating institutions and individuals that previously held permits.
- C. Indicate whether other Federal and State permits (*e.g.*, USFWS, NOAA National Marine Sanctuaries, the Army Corps of Engineers) are being sought in connection with the requested permit.

³

Standards for education and conservation programs developed and endorsed by the American Association of Zoos and Aquariums (AZA) and the Alliance of Marine Mammal Parks and Aquariums (Alliance), representing approximately 60% of the U.S. marine mammal public display community, were published in the Federal Register on October 6, 1994 (59 FR 50900). (A copy of this notice is attached in the Appendices.) If applicable, these AZA/Alliance standards may be referenced as the standards on which your education or conservation program is based. However, please note that while these professionally recognized standards have been provided by the AZA and Alliance, they represent only one example of such standards. Other professionally recognized standards of the public display community may differ from this example. If your education or conservation program is based upon different professionally recognized standards of the public display community, please provide a copy of these standards. NMFS maintains a record of these standards for reference purposes only.

VIII. Certification and Signature

The following Certification, followed by the Signature, Name, and Title of the Applicant or Responsible Party, must be submitted as the concluding section of the application.

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the following statute and the regulations promulgated thereunder, as indicated in section I. of this application:

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) and regulations (50 CFR Part 216).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Marine Mammal Protection Act of 1972."

Signature of Applicant and Date of Signature

Typed or Printed Name of Applicant

Title of Applicant

Additional Information:

Under section 104(c) of the MMPA, as amended, persons may be authorized to take marine mammals in the wild or to import marine mammals for public display purposes. MMPA section 104 is available at the following web site: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>.

The information requested in this application will be used to determine whether the activities described in the application are consistent with the requirements under the MMPA for public display permits.

Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

All permit documentation including the application, permit and amendments, reports, and inventory information required herein, is considered public information and as such, is subject to the Freedom of Information Act. The applicant is required to respond to the information requested in this application in order to obtain a permit.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

APPENDIX I – GLOSSARY OF TERMS

Applicant - The applicant must be the person who has the responsibility for and the authority to determine the disposition of the marine mammal to be received under the permit. If the applicant is a corporation or partnership, the application must indicate the date on incorporation or when the partnership was formed, and the State in which the corporation or partnership was formed. In the case of imports, when the responsibility for and authority to determine the disposition of the marine mammal remains with a foreign entity, as in the case of a breeding loan, the applicant must be the U.S. entity that will assume temporary custody of the marine mammal to be imported.

Comity - A rule of courtesy by which one government honors decisions made by another government. It is in situations where the United States lacks jurisdiction over persons or things located abroad that the U.S. Government may need to seek assurances of comity from foreign governments. Executive Branch agencies have inherent authority to ask foreign governments to honor decisions of the U.S. Government on the basis of comity. It has been the policy of the NMFS since 1975 to require a comity statement for the export of marine mammals.

Facility - In the context specific to captive marine mammals: (1) one or more permanent primary enclosures used to hold marine mammals captive (*i.e.*, pools, lagoons) and associated infrastructure (*i.e.*, equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or (2) a traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Holder - The person who has the custody, including the responsibility for and the authority to determine the final disposition of a captive marine mammal, and includes a public display permit holder.

Primary Contact - The registrar or other person responsible for maintaining the marine mammal inventory records at the facility.

Receiver - A person who receives custody of a transferred marine mammal. Where an interest in a marine mammal is being purchased or otherwise transferred, the receiver is the purchaser or transferee.

Responsible Official - The individual who is responsible for and who has the signatory authority for marine mammal custody decisions.

Transfer - The transport, donation, purchase, sale, export, or other change in the possession of or interest in marine mammals.

Transport - The physical movement of marine mammals between facilities or distinct geographic locations.

APPENDIX II - NMFS REGIONAL OFFICES

Region	Regional Jurisdiction
Alaska Region, P.O. Box 21668 Juneau, AK 99802-1668 Tel (907)586-7221; fax (907)586-7249	Alaska [including Arctic Ocean, Bering, Beaufort, Chukchi Seas]
Northwest Region 7600 Sand Point Way NE, BIN C15700 Seattle, WA 98115-0700 Tel (206)526-6150; fax (206)526-6426	Washington, Oregon, Montana, Idaho, Wyoming, Utah, Colorado, North Dakota, South Dakota
Southwest Region 501 West Ocean Blvd., Suite 4200 Long Beach, CA 90802-4213 Tel (562)980-4001; fax (562)980-4018	California, Nevada, Arizona
Northeast Region One Blackburn Drive Gloucester, MA 01930-2298 Tel (978)281-9200; fax (978)281-9371	Maine, Vermont, New Hampshire, Massachusetts, New York, Connecticut, New Jersey, Delaware, Rhode Island, Maryland, District of Columbia, Virginia, West Virginia, Ohio, Pennsylvania, Indiana, Michigan, Minnesota, Illinois, Wisconsin
Southeast Region 263 13 th Avenue South St. Petersburg, FL 33701 Tel (727)824-5312; fax (727)824-5309	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Tennessee, Kentucky, Arkansas, Missouri, Iowa, Nebraska, Kansas, Oklahoma
Pacific Islands Region 1601 Kapiolani Blvd., Room 1110 Honolulu, HI 96814-4700 Tel (808)973-2937; fax (808)973-2941	Hawaii, U.S. Pacific Islands [including American Samoa, Guam, Northern Mariana Islands]

APPENDIX III - RELEVANT STATUTES

Animal Welfare Act

The Animal Welfare Act (AWA) (U.S.C. 2131 *et seq.*) was enacted in 1966 to “insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) assure the humane treatment of animals during transportation in commerce; and (3) protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.”

The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (USDA/APHIS), has responsibility under the AWA for captive warm-blooded animals, including marine mammals. APHIS has established regulations and standards for animal care, including “Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals” (9 CFR Ch.1, Subpart E).

Most U.S. facilities maintaining animals as defined under the AWA, including marine mammals, are required to be licensed or registered by APHIS. For information concerning the AWA and its requirements and the name and address of the Veterinarian in Charge in the State concerned, contact the Regulatory Enforcement and Animal Care staff, USDA/APHIS (301-734-7833) or visit <http://www.aphis.usda.gov/>

Freedom of Information Act

The Freedom of Information Act (FOIA) (5 U.S.C. 552) was enacted in 1966 to ensure that the federal government makes government information available to the public when requested. Certain restrictions apply to the release of information (*e.g.*, classified documents).

Fur Seal Act

The Fur Seal Act (FSA) (16 U.S.C. 1151-1187) was enacted in 1966 to prohibit the taking of North Pacific fur seals, except by Alaska natives for subsistence purposes or by a permit issued by NMFS. NMFS’ regulations implementing the Fur Seal Act can be found at 50 CFR Part 215.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361-1407) was enacted in 1972 in partial response to growing concerns among scientists and the general public that certain species and populations of marine mammals were in danger of extinction or depletion as a result of human activities. The Act includes a general moratorium on the taking⁴ and importing of marine mammals, which is subject to a number of exceptions. The Act also established the Marine Mammal Commission and provides the authority under which the Commission operates.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) was enacted in 1969 to ensure that the government gives proper consideration to the environment prior to undertaking any major federal action that could significantly affect the environment. Issuance of permits is considered a major federal action. Some applications may require additional environmental analyses under NEPA, which can substantially increase the time required for processing. If the activity is considered controversial or under certain other circumstances, preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) may be necessary. If an application does not contain sufficient information on the environmental impact of the proposed activity to determine whether an EA/EIS is necessary, or if the information is insufficient to complete such analyses, the application may be returned to the applicant or processing may be delayed.

The applicant may submit a draft EA with the application to facilitate processing. The Permits Division will review and accept a draft EA if it is determined to be sufficient. Otherwise, the Permits Division will prepare an EA or EIS on the potential environmental impacts of the proposed activity using the description of the activities provided in the application and the best available information on the effects of such activities. Depending on workload, resources, and the complexity of the research proposal, preparation of an EA may take six months or more. Preparation of a final EIS typically takes well over a year. Please contact the Permits Division for guidance regarding whether or not an EA or EIS is needed.

⁴ Take (as defined in the MMPA): *To harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes by regulatory definition, without limitation, any of the following: the collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.*

APPENDIX IV – SUPPLEMENTAL INFORMATION

Atlantic bottlenose dolphin (*Tursiops truncatus*)

The taking of bottlenose dolphins in the Eastern U.S. is limited to certain areas, and quotas have been established limiting the number that may be taken each year. Permit Holders are required to consult with the NMFS Southeast Regional Director for approval of the specific dates and locations of any taking from the wild from this area. The Regional Director will coordinate the Permit Holder's collection activities with other collections and with research activities being conducted in the proposed collection area so as to avoid possible interference and cumulative adverse impacts on the subject population.

Beached/Stranded Animals

NMFS encourages the use of rehabilitated beached/stranded animals in lieu of taking animals from wild populations. Applicants must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock, particularly in the case of U.S. coastal pinnipeds, such as California sea lions (*Zalophus californianus*). For information on the availability of these animals contact the appropriate NMFS Regional Office (see attached list).

Commercial or Educational Photography Permits

The 1994 amendments to the MMPA provided new authority to issue permits for educational and commercial photography involving only Level B harassment⁵ of non-ESA listed marine mammals⁶. Presently, NMFS is reviewing such applications on a pilot basis and may publish a Proposed Rule in the *Federal Register* based in part on the information obtained from these applications (50 CFR 216.42). The commercial photography applications instructions can be obtained at the following web site: http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm#photo

Please Note: These permits apply only to commercial or educational photography of non-ESA listed species under the MMPA with methods involving Level B harassment. These permits do not provide any authorization for activities involving ESA-listed species, methods involving Level A harassment⁴, or scientific research.

Importation of Pre-MMPA Marine Mammal Parts (i.e., parts taken prior to 1972)

Marine mammal parts include any part of a marine mammal, both hard and soft, but do not include urine or feces. A letter of authorization is required for importing or exporting “pre-Act” marine

5 Harassment (as defined in the MMPA) – Any act of pursuit, torment, or annoyance which - 1) Level A harassment: has the potential to injure a marine mammal or marine mammal stock in the wild; or 2) Level B harassment: has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

6 A list of marine mammal species and information on the status of the species under the ESA is available at the following web site: http://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm.

mammal parts under NMFS jurisdiction for commercial or personal use. Pre-Act parts are either those marine mammal parts taken prior to enactment of the MMPA or those parts of species listed under the ESA that are at least 100 years old. Instructions for how to apply for authorization to import or export pre-Act marine mammal parts may be found at:

http://www.nmfs.noaa.gov/pr/permits/parts_instructions.htm.

Northern fur seals (*Callorhinus ursinus*)

The northern fur seal has been designated as depleted by NMFS. Section 102(b)(3) of the Marine MMPA prohibits the taking of a depleted species except for scientific research or enhancement purposes.

Receipt of Marine Mammal Parts from the NMFS Stranding Network under the MMPA

If you would like to receive marine mammal parts taken from stranded marine mammals after 1972 for use in scientific research, education, or curation, please contact the appropriate NMFS Stranding Network Coordinator at <http://www.nmfs.noaa.gov/pr/health/coordinators.htm>. *Note that if you intend to develop cell lines from such parts for research purposes, you must apply for a scientific research permit using the application instructions for scientific research purposes.*

Scientific Research and/or Enhancement under the MMPA, ESA, and/or FSA for Species under the Jurisdiction of the NMFS and/or USFWS

The Marine Mammal Protection Act of 1972 (MMPA) places a moratorium, with certain exceptions, on the taking and importing of marine mammals and marine mammal products. One exception provides for the issuance of permits by either the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS), depending on the species involved¹, to take² marine mammals for purposes of scientific research, public display, enhancing the survival or recovery of a species or stock, or educational or commercial photography. NMFS and USFWS regulations implementing the permit provisions of the MMPA can be found at 50 CFR Part 216 and 50 CFR Part 18, respectively.

The Endangered Species Act of 1973 (ESA) prohibits, with certain exceptions, the taking³ of species listed as threatened or endangered. The ESA provides for the issuance of permits by either NMFS or the USFWS to take threatened or endangered species for scientific research purposes and/or to enhance a species propagation or survival. Under the ESA, NMFS and USFWS share

¹NMFS has management authority for cetaceans (whales and dolphins) and pinnipeds (except walruses). USFWS has management authority for sea and marine otters, polar bears, walruses, manatees, and dugongs.

²Under the MMPA, the term “take” is defined as: *To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.*

³Under the ESA, the term “take” is defined as: *To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*

management responsibility for marine mammals (see footnote 1) and for threatened and endangered sea turtles (NMFS for sea turtles in the water, and USFWS for sea turtles on land). NMFS has sole responsibility under the ESA for salmon, shortnose sturgeon, smalltooth sawfish, and white abalone. NMFS regulations implementing the provisions of the ESA can be found at 50 CFR Parts 216 and 222-226; USFWS regulations can be found at 50 CFR Part 17.

The Fur Seal Act of 1966 (FSA) provides for research on fur seal resources of the North Pacific and permits for the taking, transport, import, export, or possession of fur seals of the North Pacific or their parts for educational, scientific, or exhibition purposes. Since northern fur seals are also marine mammals, to avoid duplication, applications for permits for scientific research are also processed under the MMPA regulations of 50 CFR Part 216.

Applications for scientific research or enhancement for marine species under NMFS jurisdiction are available at the following web site:

http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm#enhancement

NMFS may authorize the use of healthy rehabilitated beached/stranded marine mammals for research purposes in lieu of taking animals from wild populations (50 CFR 216.27). Where a captive marine mammal is necessary for the conduct of scientific research, particularly in the case of U.S. coastal pinnipeds, such as California sea lions, applicants must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock. For information on the availability of these animals contact the appropriate NMFS Regional Office:

<http://www.nmfs.noaa.gov/pr/health/coordinators.htm>

The USFWS maintains jurisdiction over beached/stranded sea turtles and sea turtles in rehabilitation. Please contact the USFWS Division of Management Authority at (800) 358-2104 with any questions regarding stranded sea turtles.

Salmon Research and Enhancement Permits under the ESA

Permits to conduct research or enhancement on endangered or threatened salmon are issued by the NMFS Northwest and Southwest Regional Offices. Information may be obtained by visiting their web sites: Northwest Region main page: <http://www.nwr.noaa.gov> and the Southwest Region main page: <http://swfsc.nmfs.noaa.gov> or by calling the Endangered Species Division, Office of Protected Resources at (301) 713-1401 for further information.

Appendix V - U.S. Fish and Wildlife Service Wildlife Inspectors

<u>DESIGNATED PORTS</u>	
U.S. Fish and Wildlife Service, Division of Law Enforcement	
<u>Anchorage - Designated</u> P.O. Box 190045 Anchorage, Alaska, USA 99519 Phone: (907)271-6198 Fax: (907)271-6199	<u>Los Angeles - Designated</u> 370 Amapola Ave. #114 Torrance, California 90501 Phone: (310)328-6307 Fax: (310)328-6399
<u>Atlanta - Designated</u> P.O. Box 45287 Atlanta, Georgia 30320 Phone: (404)763-7959 Fax: (404)763-7560	<u>Memphis - Designated</u> University of Memphis- South Camp Memphis, Tennessee 38512 Phone: (901)360-7007 Fax: (901)360-7010
<u>Baltimore - Designated</u> 40 S. Gay Street, #223 Baltimore, Maryland 21202 Phone: (410)865-2127 Fax: (410)865-2129	<u>Miami - Designated</u> 10426 N.W. 31 st Terrace Miami, Florida 33172 Phone: (305)526-2610 Fax: (305)526-2695
<u>Boston - Designated</u> 70 Everett Avenue, Suite 315 Chelsea, Massachusetts 02150 Phone: (617)892-6616 Fax: (617)889-1980	<u>New Orleans - Designated</u> 2424 Edenborn, Room 100 Metairie, Louisiana 70001 Phone: (504)219-8870 Fax: (504)219-8868
<u>Chicago - Designated</u> Wildlife Inspection Program P.O. Box 66726 Chicago, Illinois 60666-0726 Phone: (773)894-2910 Fax: (773)894-2916	<u>Newark - Designated</u> 1210 Corbin St. SeaLand Bldg., 2 nd Fl. Elizabeth, New Jersey 07201 Phone: (973)645-6171 Fax: (973)645-6533
<u>Dallas/Ft. Worth - Designated</u> 1717 West 23 rd , Suite 104 DFW Airport, Texas 75261 Phone: (972)574-3254 Fax: (972)574-4669	<u>New York - Designated</u> 70 E. Sunrise Hwy. #419 Valley Stream, New York 11580 Phone: (516)825-3950 Fax: (516)825-1929 - Inspectors Fax: (516)825-3597 - Special Agents
<u>Houston - Designated</u> 16639 W. Hardy Houston, Texas 77060-6230 Phone: (281)446-1284 Fax: (281)540-0357	<u>Portland - Designated</u> 7000 NE Airport Way, Rm. C2732 Portland, Oregon 97238 Phone: (503)231-6135 Fax: (503)231-6133
<u>Honolulu - Designated</u> 3375 Koapaka St., #F275 Honolulu, Hawaii 96819 Phone: (808)861-8525 Fax: (808)861-8515	<u>San Francisco - Designated</u> 1633 Old Bayshore Hwy., Ste. 248 Burlingame, California 94010 Phone: (650)876-9078 Fax: (650)876-9701
<u>Louisville - Designated</u> 601 Broadway, Suite 115-A Louisville, Kentucky 40202 Phone: (502)582-5989 Fax: (502)582-5981	<u>Seattle - Designated</u> 2580 South 156 th Street Seattle, Washington 98158 Phone: (206)764-3463 Fax: (206)764-3485

<u>NON-DESIGNATED PORTS⁷</u> U.S. Fish and Wildlife Service, Division of Law Enforcement	
Blaine 9925 Pacific Highway Blaine, Washington 98230 Phone: (360)332-5388 Fax: (360)332-3010	Great Falls 2800 Terminal Dr. Suite #105 Great Falls, Montana, USA 59404 Phone: (406)453-5790 Fax: (406)453-3657
Brownsville 1500 E. Elizabeth St. #239 Brownsville, Texas 78520 Phone: (956)504-2035 Fax: (956)504-2289	Nogales 9 N. Grand Avenue #2229 A Nogales, Arizona 85621 Phone: (520)287-4633 Fax: (520)287-3877
Buffalo 405 N. French Road #120 B Amherst, New York 14228 Phone: (716)691-3635 Fax: (716)691-3990	Laredo Convent & Zaragoza Bridge #1, 200.9 Laredo, Texas 78040 Phone: (956)726-2234 Fax: (956)726-3718
Detroit Bldg. 830; 2599 World Gateway Place Detroit Metro Airport, Michigan, USA 48242 Phone: (734)247-6800 Fax: (734)247-6805	Puerto Rico 651 FED. Dr. Suite 372-12 Guaynabo, PR 00965 Phone: (787)749-4338 Fax: (787)749-4340
Dunsieth RR1, Box 115 Dunseith, North Dakota, USA 58329 Phone: (701)263-4462 Fax: (701)263-4463	San Diego 185 West F Street, Room 440 San Diego, California 92101 Phone: (619)557-5794 Fax: (619)557-2997
El Paso Bota, 3600 E. Paisano, #142A El Paso, Texas 79905 Phone: (915)872-4765 Fax: (915)532-4776	Tampa 9549 Koger Blvd. #111 St. Petersburg, Florida 33702 Phone: (727)570-5398 Fax: (727)570-5450
Guam 415 Chalan San Antonio Road Baltej Pavillion, Suite 209 Tamuning, Guam 96913-3620 Phone: (671)647-6064 Fax: (671)647-6068	St. Paul/Minneapolis HHH Terminal 7100 34 th Avenue S. Minneapolis, Minnesota 55450 Phone: (612)726-6302 Fax: (612)726-6303

⁷The USFWS Law Enforcement Division MUST authorize ALL non-designated port usage. If you prefer to use a non-designated port, please contact the appropriate Law Enforcement Office.

PRA Justification: Application Instructions for Public Display Permits

50 CFR 216.43 reserved for public display provisions not codified; section 104(c) of the MMPA as amended

by P.L. 103-238.

Application instructions for public display permit applicants reflect the 1994 amendments to the MMPA and are processed according to 50 CFR part 216, subpart D, as applicable. Section 104(c)(2) of the MMPA was amended whereby the need to obtain a public display permit is limited to captures of marine mammals from the wild or import of marine mammals.

Section I-III of the application instructions correspond to those in the application instructions for scientific research and enhancement permits. The Previous Permits Section VII and Certification Section VII at the end of the application are the same as for scientific research and enhancement permit applications. Information requested in Section IV of the public display permit application also applies to scientific research and enhancement permits (see scientific research and enhancement permit application justification discussion for regulatory citations and purpose of requested information).

The following is discussed in detail here for public display permits: Section IV. F. Import Requirements: 50 CFR part 14; 50 CFR 216.35(c-d); 216.36(a)(iii). Since the AWA standards for care, maintenance and transportation of marine mammals are not enforceable by APHIS until the marine mammal reaches the U.S., NOAA Fisheries can condition permits to ensure the well-being of the animals while in transit in the foreign country and to ensure that the applicant has planned appropriately for the animal(s) during transport. Except for purposes of scientific research or enhancement, the import of pregnant, lactating, or either unweaned or less than 8 month old marine mammals at the time of taking or transfer/transport is prohibited under Section 102 of the MMPA, unless such import is necessary for the protection or welfare of the marine mammal. Applicants must submit this information if they propose to import marine mammals under the authority of a public display permit. An applicant proposing to import a live animal for public display must demonstrate that the manner of taking in the foreign country was consistent with what would be allowed in the U.S. or on the high seas under the jurisdiction of the MMPA, to ensure that animals are taken humanely as required by the MMPA. The applicant must state whether the import proposed will result in replacement takes or an increased demand to take marine mammals from the wild. This information is necessary to consider cumulative effects and any indirect impacts of permit issuance, and to avoid circumstances leading to unauthorized taking of marine mammals.

Section V. Export: 50 CFR 216.33(b)(1-2). A permit is not required for the export of marine mammals for public display purposes. However, these exports must meet standards comparable to those applicable to the transport of marine mammals between U.S. facilities (16 U.S.C. 1374 *et seq.*). These requirements are provided to applicants for information.

Section VI. General Requirements for Public Display: This section requests the applicant to submit information necessary to address the requirements of Section 104(c)(2)(A) of the MMPA, which limits the issuance of public display permits to applications who (1) are licensed or registered under the AWA by APHIS; (2) offer a program for education or conservation purposes that is based on professionally recognized standards of the public display industry; and (3) maintain a facility that is open to the public on a regularly scheduled basis with access not restricted other than by an admission fee. Without submission of the information requested in this application, NOAA Fisheries would not be able to determine whether the applicant meets the three issuance criteria.

APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR
PERMITS
UNDER THE
ENDANGERED SPECIES ACT
MARINE MAMMAL PROTECTION ACT
FUR SEAL ACT
FOR
SCIENTIFIC RESEARCH OR ENHANCEMENT

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration (NOAA)
National Marine Fisheries Service (NMFS)
Office of Protected Resources
Permits, Conservation and Education Division, F/PR1
1315 East-West Highway, Room 13705
Silver Spring, Maryland 20910-3226
Tel: (301) 713-2289
Fax: (301) 427-2521
Web site: <http://www.nmfs.noaa.gov/pr/>

**APPLICATION INSTRUCTIONS
AND SUPPLEMENTAL INFORMATION
FOR PERMITS UNDER THE
MARINE MAMMAL PROTECTION ACT
ENDANGERED SPECIES ACT
FUR SEAL ACT FOR
SCIENTIFIC RESEARCH AND/OR ENHANCEMENT**

INTRODUCTION

The Marine Mammal Protection Act of 1972 (MMPA) places a moratorium, with certain exceptions, on the taking and importing of marine mammals and marine mammal products. One exception provides for the issuance of permits by either the National Marine Fisheries Service (NMFS) or the U.S. Fish and Wildlife Service (USFWS), depending on the species involved¹, to take² marine mammals for purposes of scientific research, public display, enhancing the survival or recovery of a species or stock, or educational or commercial photography. NMFS and USFWS regulations implementing the permit provisions of the MMPA can be found at 50 CFR Part 216 and 50 CFR Part 18, respectively.

The Endangered Species Act of 1973 (ESA) prohibits, with certain exceptions, the taking³ of species listed as threatened or endangered. The ESA provides for the issuance of permits by either NMFS or the USFWS to take threatened or endangered species for scientific research purposes and/or to enhance a species propagation or survival. Under the ESA, NMFS and USFWS share management responsibility for marine mammals (see footnote 1) and for threatened and endangered sea turtles (NMFS for sea turtles in the water, and USFWS for sea turtles on land). NMFS has sole responsibility under the ESA for salmon, shortnose sturgeon, smalltooth sawfish, and white abalone. NMFS regulations implementing the provisions of the ESA can be found at 50 CFR Parts 216 and 222-226; USFWS regulations can be found at 50 CFR Part 17.

The Fur Seal Act of 1966 (FSA) provides for research on fur seal resources of the North Pacific and permits for the taking, transport, import, export, or possession of fur seals of the North Pacific or their parts for educational, scientific, or exhibition purposes. Since northern fur seals are also marine mammals, to avoid duplication, applications for permits for scientific research are also processed under the MMPA regulations of 50 CFR Part 216.

¹NMFS has management authority for cetaceans (whales and dolphins) and pinnipeds (except walruses). USFWS has management authority for sea and marine otters, polar bears, walruses, manatees, and dugongs.

²Under the MMPA, the term “take” is defined as: *To harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.*

³Under the ESA, the term “take” is defined as: *To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*

Activities/Species for Which These Instructions Apply

These permit instructions provide the format for preparing applications for scientific research and/or enhancement permits to take species for which NMFS has management responsibility – that is:

- **cetaceans and pinnipeds (except walruses) under the provisions of the MMPA and ESA (if applicable);**
- **sea turtles in the water under the provisions of the ESA; and**
- **shortnose sturgeon, smalltooth sawfish, and white abalone under the provisions of the ESA.**

These application instructions are also available as a PDF or Microsoft Word document from the NMFS Office of Protected Resources web site: <http://www.nmfs.noaa.gov/pr/>.

If the proposed research or enhancement activity includes species under the jurisdiction of both NMFS and USFWS, a joint permit from NMFS and USFWS is required. If the proposed research or enhancement activity involves only species under the jurisdiction of USFWS, a permit from USFWS must be requested (See section below, “Guidelines for Preparing Your Application”).

Species lists and information on the status of species under the MMPA, ESA, and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) are available by calling the Permits Division or on the following web site: http://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm .

For information on applying for permits to conduct other types of activities (*e.g.*, commercial/educational photography) involving the taking of marine mammals under the MMPA, or the taking of salmon under the ESA, please see Appendix II and NMFS’ web sites: www.nmfs.noaa.gov/pr/permits/ and <http://apps.nmfs.noaa.gov/index.cfm> .

Guidelines for Preparing Your Application

If you have any questions concerning the preparation of your application, please contact the Permits, Conservation and Education Division (Permits Division) at (301) 713-2289.

When to Apply – Processing of an application for non-ESA listed marine mammals (*i.e.*, animals not designated as threatened or endangered under the ESA) usually requires at least four months from submission of a *complete* application, including a mandatory 30-day public comment period. *We strongly recommend that you submit an MMPA application at least six months in advance of your proposed research.* In addition, the North Pacific fur seal (*Callorhinus ursinus*) is also protected under the FSA, which can involve additional requirements.

Applications involving threatened or endangered species should be submitted at least one year prior to the planned initiation of research. Such applications require consultation with the NMFS Endangered Species Division, which can take a minimum of 135 days. The requirement for consultation includes any ESA-listed species that may be in the proposed research area, even if they are not the subject of the research, as well as any designated critical habitat that may be affected by the research.

Give Complete Information – The permit processing “clock” does not begin until the Permits Division has determined that an application is complete. An application must be considered complete before the Permits Division can publish a Notice of Receipt in the *Federal Register*, which initiates a 30-day public comment period. Therefore, avoid the use of technical jargon as much as possible because your application will be available to the public for review. As part of the review process, the completed application also is forwarded to the appropriate NMFS Region(s) and, where takes of marine mammals are involved, to the Marine Mammal Commission (see Appendix III) for review and comment.

Incomplete applications cannot be processed. NMFS may return incomplete applications or request additional information from an applicant. If the requested information is not received within 60 days of the request, the application will be returned. Therefore, please provide complete and specific information according to the instructions. To expedite processing, when a question does not apply, please indicate “Not Applicable” (N/A) and provide a brief explanation as to why not.

You are encouraged to contact the Permits Division with any questions in advance of submitting an application. It is often helpful to draft an application and send it to NMFS Permits Division for preliminary review. If possible, please send the draft electronically (contact the Permits Division for a current e-mail address) to save on paper and postage. Permits Division staff will review your draft application and assist you in ensuring that it is complete. Once the application is complete, a signed copy of the application should be mailed to the Permits Division.

It is important that all applications conform to the instructions provided. Applications that do not adhere to the following requirements for content and format will be considered incomplete and may be returned to the applicant or will result in processing delays if the applicant needs to be contacted for additional information. To facilitate review, information should be presented in the designated categories/headings, and in the order listed. Use of additional subheadings to clarify the application may be added at the discretion of the applicant. Line spacing, font size and style are at the discretion of the applicant, but the application must be readily legible. We suggest Times New Roman 12 pt font. Do not submit bound applications.

Where to send your application - Submit a signed original and one hard copy of the application to the Chief, Permits, Conservation and Education Division, Office of Protected Resources, 1315 East-West Highway, F/PR1 Room 13705, Silver Spring, Maryland 20910-3226. All applications must also be accompanied by an electronic copy (in Word,

WordPerfect, or PDF), which can be included on a 3.5" disk or CD, or sent as an email attachment.

Letters of Confirmation under the General Authorization – The 1994 amendments to the MMPA established a streamlined “General Authorization” (GA) procedure for obtaining permission to conduct research activities involving only Level B harassment¹ (e.g., photo-identification, aerial surveys) on non-ESA listed marine mammals (i.e., species not listed as endangered or threatened under the ESA). If your research meets these criteria, you may be eligible to obtain a letter of confirmation under the GA. You should contact the Permits Division at (301) 713-2289 to confirm whether your research can be covered under the GA. Interim Final Regulations implementing the GA (50 CFR 216.45) were published by the Service in the *Federal Register* on October 3, 1994 (59 FR 50372) and are available on the Service’s web site at http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm#ga .

Please note: *In the event that your proposed research activities involve either (1) both ESA listed and non-ESA listed species, and/or (2) both Level A¹ and Level B harassment activities, the scientific research permit requirements take precedence over the GA.*

Current or Previous Permit Holders – If you currently hold or have held a NMFS permit in the past, a new application cannot be processed until all reports required to date under those permits have been submitted and determined to be complete and in compliance with reporting requirements.

Permit Amendments – Scientific research and enhancement permits may be amended or modified by the Director, Office of Protected Resources in response to or independent of a request from the Permit Holder or the Principal Investigator (PI) named in the permit. The Permit Holder or PI must submit requests for amendments to permits in writing to the Chief, Permits, Conservation and Education Division, Office of Protected Resources. An application for an amendment or modification must follow the same format as the original permit application, and should address all applicable sections of these instructions, including a detailed description of the purpose and nature of the proposed changes. Where a section has been previously addressed and will not change, you may simply make reference to your original permit application.

Amendment or modification requests involving an increase in the number of species or animals to be taken, changes or addition of research locations, or changes in the manner of take, especially for intrusive activities, are considered major changes. Major amendments

¹ Harassment (as defined in the MMPA) – *Any act of pursuit, torment, or annoyance which - 1) Level A harassment: has the potential to injure a marine mammal or marine mammal stock in the wild; or 2) Level B harassment: has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.*

must undergo publication and a 30-day public review, and are granted or denied at the discretion of the Director, Office of Protected Resources.

Minor changes not involving additional numbers of animals, species, research locations, or substantial changes in research procedures may be authorized at the discretion of the Director without public review. A one-year extension of a permit may be granted as a minor amendment prior to the expiration of your permit provided that no additional takes or major changes to the permit are requested. *For ESA-listed species, even minor amendments may require additional or supplemental analyses under the ESA and NEPA.*

Permit Fees – Section 104(g) of the MMPA and 50 CFR Section 222.308 (for ESA species) provide the authority to establish and charge a reasonable permit fee; however, there is no fee at this time.

USFWS Permits – Application instructions for sea turtles on land and marine mammal species under USFWS jurisdiction can be obtained by calling the USFWS Division of Management Authority at (800) 358-2104 or by visiting the Service's web site at <http://permits.fws.gov/>.

CITES Import/Export Permits – U.S. regulations require that imports or exports of wildlife or parts thereof listed in Appendix I or II to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)² be accompanied by the proper CITES permit or documentation (50 CFR 23). This is in addition to the required permits under the ESA and, as applicable, the MMPA.

The USFWS Division of Management Authority (see telephone number and web site, above) is responsible for implementing CITES. The CITES status of threatened and endangered species and marine mammals under NMFS and USFWS jurisdiction is indicated on the following web site: <http://www.cites.org/>. If your research or enhancement activities will involve import or export of wildlife (including tissue samples or other parts), you are responsible for securing a CITES permit from USFWS as necessary.

² CITES (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) is an international agreement between Governments. Its aim is to ensure that international trade in specimens of wild animals and plants does not threaten their survival. CITES works by subjecting international trade in specimens of selected species to certain controls. All import, export, re-export and introduction from the sea of species covered by the Convention has to be authorized through a licensing system.

APPLICATION INSTRUCTIONS

I. TITLE OF APPLICATION

Indicate in the title whether you are requesting a permit for scientific research, enhancement, or both, and the applicable statute(s) (ESA, MMPA, and/or FSA). For example: “Application for a scientific research permit under the ESA and MMPA.”

For assistance in selecting a title, please contact the Permits, Conservation and Education Division (Permits Division) at (301) 713-2289.

II. DATE OF APPLICATION

Indicate date application was completed.

III. APPLICANT AND PERSONNEL

A. Applicant/Permit Holder, Principal Investigator, Co-investigator(s), and other Personnel Directly Involved in Taking

Provide the following contact information for the Applicant/Permit Holder, Principal Investigator (PI), and all Co-investigators (CIs). *Refer to Appendix III, Definitions, for explanations of PI, CI, etc.*

Name
Title
Institutional Affiliation
Mailing Address
Physical Address (if different from mailing address)
Telephone number
Fax number
E-mail address

If the Applicant/Permit Holder is an institution, governmental entity, partnership, or corporation, specify a Responsible Party (i.e., the individual who has signature authority for the institution, etc.). Indicate the relationship between this entity and the PI. There can be only one Applicant/Permit Holder and only one PI for each application/permit. The Applicant/Permit Holder can be the same as the PI. Permits are not transferable from one Permit Holder to another and the Applicant/Permit Holder cannot be changed. The Responsible Party, PI, and CIs on a permit can be changed at the request of the Permit Holder and approval by NMFS. There can be more than one CI on an application/permit.

List any other persons (*e.g.*, veterinarians, research assistants, or students) to be directly involved in the taking, import, or export. Indicate the primary contact for correspondence during the permit review process and if that person is other than the Applicant/Permit Holder, PI, or a CI, please include their name and contact information requested above.

B. Qualifications and Experience

Attach a summary of qualifications (*e.g.*, resume, CV) for the Applicant, PI, and CIs and the activities to be carried out by each. Information on the individual's previous experience with the activities proposed in the application is required. Do not include personal information such as social security number or date of birth, as the application will be available to the public.

Also provide this information for any veterinarians that would be involved in the research and the duties they would be performing (if they are not designated as CIs). For sea turtle research, provide the name and qualifications of a veterinarian you would be able to contact in the event of an emergency during your activities.

IV. PROPOSAL

A. Summary

Provide a brief summary, not more than 200 words, of the proposed research and/or enhancement project. This summary will be published in the *Federal Register* Notice of Receipt for a 30-day public comment period, and therefore should be understandable to a lay reader. The summary should include concise statements of the following information:

- Purpose of the research or enhancement activity;
- Target species (both common and scientific names);
- Type and manner of take (*e.g.*, photo-identification, capture, biopsy sampling);
- Numbers of animals to be taken, by species, for each activity (over a specified time, *e.g.*, per year);
- Numbers and kinds of non-target marine mammal and ESA-listed species that may be taken incidentally during proposed activities;
- Specific geographic location(s) of the take, including locations from which animals will be imported, or to which they will be exported, if appropriate; and
- Requested period of the permit³.

B. Introduction

1. Status of the Species

List the target species (common and scientific names) and, as applicable, the subspecies, population group and range that may be taken, imported, or exported.

List any non-target species, including but not limited to, marine mammals, reptiles, sea birds, sharks, etc., and any ESA-listed species (plant or animal) that may occur in the study area, and therefore, may be taken (*e.g.*, disturbed, harassed, or injured)

³ Note that permits are issued for up to a five-year period.

incidentally during the course of your proposed activities. Include any USFWS species that may be incidentally taken.

Indicate the status of each species or stock as determined under the MMPA (depleted, strategic), ESA (threatened or endangered), and Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Appendix I, II, or III) as applicable. Species information is available at:

<http://www.nmfs.noaa.gov/pr/species/>

<http://www.nmfs.noaa.gov/pr/sars/>

<http://www.fws.gov/>

<http://www.cites.org/>

2. Background/Literature Review

Provide a review of the current knowledge of the problem under investigation, with appropriate citations, to demonstrate the following:

- (1) whether your proposed activities are different from or build upon past research being cited;
- (2) whether your activities would duplicate previous efforts, and if so, why; and/or
- (3) whether your proposed activities are necessary and would contribute to the conservation of the subject species.

Include the complete literature citations in the “References” section at the end of your application.

3. Hypothesis/Objectives and Justification

Provide a clear statement of the objectives and expected significance of the proposed research and/or enhancement activities. For scientific research, include the hypothesis being tested. For enhancement, describe how the activity relates to enhancing the survival or recovery of the species in the wild. Explain the rationale for the proposed research study or enhancement activity and proposed methods, and how your study design will allow you to meet your research objectives.

Justify the following:

- (1) choice of species;
- (2) number of animals to be used (include a power analysis or sample size estimation to determine whether the sample size is sufficient to provide statistically significant results); and
- (3) exposure of animals to stress, discomfort, pain, or injury (include an explanation of why other less-intrusive or risky techniques are not appropriate).

Additionally, the following Statutory and Regulatory requirements must be addressed for the target species, as applicable.

For ESA-listed NON-marine mammal species: Justify use of an ESA-listed species rather than a non-listed species, including a discussion of possible alternatives.

Provide a statement of whether the proposed project has broader significance than the individual researcher's goals. For example, does the project respond to recommendations of any national or international scientific body charged with research or management of the endangered species and if so, how? Does the research contribute to the objectives identified in the species recovery or conservation plan, and if so, how will your proposed project meet those objectives?

For ESA-listed marine mammals and MMPA-depleted species: Explain why the proposed research cannot be conducted using an alternative species or stock.

Explain how the expected research results would:

- (1) directly benefit the species or stock;
- (2) contribute significantly to fulfilling a critically important research need;
- (3) identify, evaluate, or resolve conservation problems for the species or stock; or
- (4) contribute significantly to understanding the basic biology or ecology of the species.

For enhancement activities on marine mammals:

Explain how the proposed activity will:

- (1) contribute to maintaining or increasing distribution or abundance;
- (2) enhance the health or welfare of the species or stock; or
- (3) ensure the survival or recovery of the species or stock in the wild.

Also indicate how the enhancement activity is consistent with the species conservation or recovery plan.

For enhancement activities involving captive maintenance of threatened, endangered, or depleted species of marine mammals: Also discuss how the proposed captive maintenance will contribute directly to the survival or recovery of the species by either:

- (1) maintaining a viable gene pool;
- (2) increasing productivity;
- (3) providing necessary biological information; or
- (4) establishing animal reserves.

If these animals are to be removed from the wild for captive maintenance, discuss how the benefit to the species outweighs the alternatives that do not require removal from the wild. Indicate what plans are in place for returning animals and any offspring to the wild. If animals are going to remain in permanent captivity, additional justification is required.

C. Methods

It is important to provide complete details for all activities to facilitate analyses as required under the ESA, MMPA, and NEPA.

1. Duration of the Project and Locations of Taking

Duration: *Clearly specify the proposed start date and end date of your research/field seasons. Specify the overall duration of the research or enhancement project and specific dates (with location if multiple locations will be used) of the proposed taking, import, or export, where known. NOTE: permits are issued for up to a five-year period.*

Location: *Identify all locations in which the activities will occur. Locations should be identified as specifically as possible within a general area (e.g., specific islands, bays, latitude/longitude, river kilometers, etc., within a specified geographic region or state). Include a map of the study area if available. In the case of aerial or vessel surveys, also indicate the coordinates outlining the proposed survey area(s).*

If the location you will be working in has been given any special status (e.g., National Marine Sanctuary, State Reserve, etc.), indicate the name of the protected area. Are your proposed activities consistent with the protective status of the site, and could the activities effectively be carried out at an alternative location? For any activities to be conducted in protected areas, justification for the choice of location is required.

Provide a brief (e.g., one paragraph) physical description of the location(s) in which you will be working.

For imports, indicate the country of origin/export to the U.S.; for exports, indicate the destination country. Include U.S. ports of import/export to be used (see attached definitions).

2. Types of Taking, Methodology Involved, and Numbers of Animals that would be Taken (in the wild or in captivity)

Table: *Include a Take Table of your proposed activities, as shown below, with the following information:*

- species;
- life stage (e.g., larvae, pup, calf; sub-adult; adult); if you are proposing to take immature animals, including dependent mammals, specify the minimum age at the time of taking;
- reproductive condition (e.g., pre-spawning fish, lactating marine mammals);
- sex;
- expected number of takes (include the maximum number of individuals proposed to be taken by each type of activity annually or over a specified time period and also indicate the minimum number that would be taken in order to

reach your objectives and statistical requirements, in the event the maximum number is not obtainable due to circumstances beyond your control);

- take type(s);
- transport methods if applicable;
- location of take.

Incidental harassment – also indicate in the Take Table the annual maximum number of marine mammals or ESA-listed species, by species and location, that may be harassed or harmed incidental to your activities and that could occur in the study area.

Table 1. Annual takes.							
Species	Life Stage	Sex	Expected Take (max & min)	Number of Takes	Take Action	Transport Methods- if applicable	Location

Narrative: Provide a narrative account of the manner in which animals would be taken (*e.g.*, aerial survey, photo-identification, capture, tagging, blood sampling, etc.) and methodologies to be used for each type of take. Describe all methods in detail, citing references where applicable. If the application is for a new technique or methodology, provide sufficient information to allow evaluation of its relative merits and potential effects on the animals and environment. See below for guidance on specific information to include in the description of your methods.

Indicate whether individual animals will be taken more than once (*e.g.*, recapture for instrument retrieval) and the frequency of the take per individual per year. State whether the same animals will be taken in more than one manner, and if so, how (*e.g.*, capture, blood sample, biopsy, and flipper tag).

Provide information on the target species’ life history and how your proposed activities coincide with or avoid sensitive physiological/biological periods such as reproductive seasons and maternal care.

If the target species or any other species (including but not limited to marine mammals, ESA-listed species, sea birds, sharks, etc.) may be incidentally harassed, disturbed, captured, or injured by your activities, including USFWS species, indicate the species and estimated number that may be affected each year, and the manner in which they may be affected.

The following is guidance on information to include in the narrative description of your activities:

Acoustics: Provide all of the following operational details about the sound source: frequency, source level characteristics including descriptive statistics (*i.e.*, minimum, maximum, mean; how source levels vary as a function of time), source depth in water column, signal duration, duty cycle, and energy output.

Please specify the anticipated maximum received level of sound at the target animals and expected behavioral or physical responses of target and non-target animals. Consider and discuss possible effects on marine species other than mammals and sea turtles. Include a discussion of mitigation and monitoring measures that would be employed such as ramp-up or shutdown protocols and observer protocols. You are also encouraged to provide results of a propagation model appropriate to the geographic location and time of year proposed for the broadcasts.

For acoustic studies on captive animals, in addition to the information above, provide what is known about baseline hearing parameters, sensitivity of methods in measuring noise impacts, and what follow-up measurements will be taken.

Aerial and boat surveys: Indicate type of aircraft or vessel, flight altitudes, approach distance of boats to animals, and frequency of surveys. Provide details on the type of survey you are conducting (*e.g.*, line transect). If surveys will include photo-identification, indicate whether the survey craft will break from the transect and approach target animals more closely. If photo-identification or other activity will require multiple approaches, indicate the maximum number of approaches per animal.

Capture: Describe capture methods in detail, including number of persons used to capture, if applicable, and how you will approach and physically capture an animal. For nets, include size of net, net mesh size, deployment method, and soak time if applicable. For traps, describe the dimensions of the trap and deployment or operation. Include any net or trap monitoring protocols.

Handling/Restraint: Describe handling/restraint methods in detail. Indicate maximum handling/restraint time needed per animal to complete the proposed procedures, and number of persons required for restraint. Indicate whether sedatives or immobilizing drugs will be used and if so, type, dosage, and route of administration. Indicate maximum duration of sedation/immobilization and whether reversal and/or emergency drugs and resuscitation equipment would be used if necessary. For pinnipeds, indicate approximate time needed on a rookery/haul-out to conduct the procedures.

Import/export: Provide a detailed description of how the animals or parts to be imported were or would be taken in the country of origin, addressing the humaneness of collection of live animals from the wild and sample collection from live animals, or how an animal died (*e.g.*, natural stranding or died incidental to fisheries), as

applicable. Provide documentation regarding the legality of the take in the country of origin. Describe shipment/transport methods for import/export. If an import would be necessary for the protection or welfare of a marine mammal, discuss the circumstances involved and any alternatives considered. See also “*Sample collection and analysis*” below.

Marking: Indicate type of mark (*e.g.*, hot-brand, flipper tag, bleach, photo-ID, etc.) and describe method used to mark animal. For example, for hot- or freeze-branding, describe location of brand on animal, type of branding iron, iron temperature, contact time, total size of brand (*e.g.*, three 5-cm by 8-cm characters); and indicate whether anesthesia will be used and if not, why. Also describe mark-recapture methodologies.

Sample collection and analysis: Give protocols for how all specimens will be collected, citing references where appropriate, and include safe handling procedures for working with hazardous and biological materials. Describe all parts/samples (*e.g.*, blood, blubber biopsy, fin clip, etc.) that will be taken, imported, or exported, including a description of size (*e.g.*, 5 mg blubber biopsy) or volume (*e.g.*, 50 ml blood) and number of samples that will be taken per animal. Indicate the amount needed for the various analyses proposed.

Describe how samples will be stored, transported, shipped, and analyzed. Indicate if any analyses will be contracted out or otherwise completed by persons not listed as Co-investigators in this application. List and attach statements of agreement from these collaborators to the application (if available).

Provide a description of what arrangements have been made, if any, for disposition of any parts or samples remaining after the research or enhancement activities are complete, including curation at your institution. Describe any arrangements made with a museum or other institutional collection to ensure that remaining tissues will be available for scientific research or enhancement purposes.

Please note that NMFS has established a National Marine Mammal Tissue Bank that is a source and repository of material for qualified researchers. For more information on receiving or donating tissues, contact the Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources (301) 713-2232 or visit the following web site: <http://www.nmfs.noaa.gov/pr/health/tissue/> .

Scientific instruments: Provide a complete description (weight and external dimensions) of any equipment to be attached to or implanted in an animal (*e.g.*, TDR, VHF tag, PIT tag, etc.), as well as a description of the method of attachment or implantation (and removal where applicable), location of placement on the animal, number of attachments/implantations per animal (*e.g.*, TDR and satellite tag) and whether they are combined or not, anticipated duration of attachment or implantation, and method of retrieval or tag release. Describe hydrodynamic drag properties for external tags with citations if possible. For sonic tags, also include emission frequency. Describe protocol for tracking and monitoring instrumented animals.

3. Additional Information for Removing Animals from the Wild into Captivity and Research or Enhancement on Captive or Rehabilitating Animals

In addition to the above-requested information, when proposing to remove an animal from the wild (permanent or temporary captivity) and/or to conduct research or enhancement activities on captive animals (including marine mammals in rehabilitation), as applicable:

- (a) Explain why removal from the wild is necessary and why suitable animals cannot be obtained from captive or rehabilitated stock.
- (b) Provide a description of the enclosure or cage to be used for temporary holding and transport, mode of transportation, name of transportation company, special care during transport, and the length of time required for the transfer from the capture site to the initial holding facility, and then to the permanent holding facility. Provide a list of personnel who will be involved in and/or accompanying the animals during transport and whether a veterinarian will be present, and their qualifications.
- (c) *For marine mammals only:* If the source stock is to be beached/stranded marine mammals undergoing rehabilitation, indicate the name and location of the rehabilitation facility.
- (d) If the source stock is from marine mammals or endangered species already in captivity (other than beached/stranded animals) indicate the name and location of the facility, and identify the specific animals (by NOAA ID number where applicable) involved in the proposed activity.
- (e) *For marine mammals only:* Where applicable, include a copy of any license or registration issued by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture, any outstanding variances granted, and the most recent APHIS inspection report.
- (f) Provide a written statement from the responsible veterinarian or expert certifying that the facilities, methods of care and maintenance, and methods of transport will be adequate to ensure the well-being of the animals and, *for marine mammals*, comply with all care and transport standards established under the AWA.
- (g) *For ESA-listed species:* Describe the care and maintenance of the animals, including a complete description of the facilities where they will be maintained. This includes the dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each; the water supply, amount, and quality; the diet, amount and type; sanitation practices; and qualifications and experience of the husbandry staff.
- (h) Indicate whether a captive breeding program will be established and if so, provide justification in accordance with the species conservation or recovery plan as

applicable for enhancement activities. *For ESA-listed species*, indicate if you are willing to participate in a captive breeding program if requested by NMFS.

- (i) Indicate the disposition of captive animals at the termination of research or enhancement activities.
- (j) If release of captive animals to the wild is proposed, state the length of time the animals will be held and describe the protocols for the release, including post-release monitoring protocols. Include in the release protocol mitigation for the following:
 - Disease transmission between released animals and the wild population
 - Potential genetic exchanges between introduced and endemic stocks
 - Ability of the released animals to forage and protect themselves from predators
 - Elimination of behavioral patterns acquired during captivity that could prove detrimental to the released animals or the social structure of local populations.

4. Lethal Take

Intentional lethal take: If an intentional lethal take is involved, provide an explanation of why a non-lethal method is not feasible and, for depleted, endangered, or threatened species, describe how the research results will directly benefit the species or stock or fulfill a critically important research need.

Unintentional lethal take: If *unintentional* mortality or serious injury is possible as a result of the proposed activities, indicate the maximum number of animals from each species that could die or be seriously injured incidental to the research per year. Please note that this refers not only to animals that die during the conduct of research, but also to those that may succumb, at some later time, due to effects of research such as capture myopathy, adverse reaction to drugs, infection at the site of intrusive procedures, or abandonment of dependent young.

5. Special considerations for Applicants working abroad (exports of marine mammals from the U.S.)

Foreign applicants requesting the export of marine mammals, or marine mammal parts/products from the U.S., must submit their applications to NMFS through the appropriate agency of the foreign government (*e.g.*, the CITES management authority). The appropriate agency of the foreign government must certify the accuracy of the information submitted in the application.

Additionally, if the application is for the export from the U.S. of living marine mammals subject to the MMPA, ESA, or FSA, then the appropriate agency of the foreign government must certify that the laws and regulations of the government involved allow the enforcement of requirements equivalent to the requirements of the ESA, MMPA, FSA, and AWA, as applicable, and that government will enforce such requirements.

D. Effects of the Research and Measures to Minimize Stress, Pain, Suffering, and/or Harassment

The information you provide on the effects of your research is critical for completing the analyses required under the MMPA, AWA, and importantly, ESA and NEPA. Please provide complete information to facilitate timely processing of your application. Include references where available. Note that references may include both published and unpublished sources of information. If no information is available for the proposed species, inferences may be made from other species.

1. Effects

Clearly indicate the known or anticipated effects (*i.e.*, stress, pain, suffering, injury; effects on behaviors such as resting, foraging, migration, mating, nursing, etc.) of each activity proposed (*e.g.*, effects of capture, blood sample, tag; effects of aerial and vessel survey/close approach, etc.) on the target species in the application, based on published or unpublished data or information on other species.

When completing this section, of particular importance for consideration is the assessment of risk. For example, what is it specifically about an activity that puts the animal at risk and how do the different activities both individually and combined pose risk to the animals? Explain the anticipated effects on the individual animals as well on the population or stock as a whole, and what this determination is based on. Include citations for any relevant references and be prepared to provide copies if requested.

Incidental effects

Also describe any potential effects of incidental harassment or take to conspecifics or other non-target species (*e.g.*, other marine mammals, fish, or invertebrates; any threatened or endangered animals including fish, birds, reptiles, and mammals) in the study area.

The following is guidance on the type of information to include in the description of the effects of your activities, as applicable:

Acoustics: Describe anticipated responses of the target individuals to the sound. Discuss known or possible effects of the sound on the target individual, such as disturbance, temporary threshold shift, or permanent threshold shift. If behavioral or physiological effects are possible from exposure, discuss what proportion of animals exposed to the sound is likely to respond or be affected. Also discuss known or possible effects of the sound on non-target animals that may be within the area of propagation.

Aerial and boat surveys: Describe anticipated responses of individuals of each proposed species to survey craft. If the survey method is known or likely to result in disturbance, discuss what proportion of animals exposed to the survey are likely to respond and the nature and duration of their response.

Capture: Describe anticipated responses (*e.g.*, evading approach; exhibiting stress response with increased respirations, etc.) of individuals of each proposed species to capture in general, and to the proposed capture method in particular. Also indicate whether the capture method is known or likely to result in injury or mortality, and what proportion of animals subjected to the method could be injured or die, based on previous experience or published work.

For any non-target species that may be incidentally caught, describe what effects this could have on those species. Also indicate whether your nets or capture methods could affect the physical or biological environment, such as by alteration or disturbance of substrate or vegetation.

Handling/Restraint: Describe anticipated responses of individuals of each proposed species to the types of handling and restraint proposed, including effects of sedatives or immobilizing agents if used. For example, indicate if individuals struggle and show signs of stress during restraint, etc., and describe how they react. Indicate the physiological response to any drug administered and clearance time of the drug. Also indicate whether the handling and restraint methods are known or likely to result in injury or mortality and what proportion of animals subjected to the method are likely to be injured or die. Also indicate who will be authorized to administer sedatives and immobilizing agents and what experience, training, or other qualifications they have to do so.

Import/Export: Provide a detailed description of how the animals or parts to be imported were or would be taken in the country of origin, addressing the humaneness of collection of live animals from the wild and sample collection from live animals where applicable (see “*Sample collection*” below), and/or how an animal died (*e.g.*, natural stranding or died incidental to fisheries). Also provide documentation regarding the legality of the take in the country of origin. If an import/export would be necessary for the protection or welfare of a marine mammal, discuss the circumstances involved and any alternatives considered.

Incidental Harassment: Describe the anticipated responses of any non-target animals of the proposed species, including conspecifics and other species in the area, to your activities. If the proposed activities are known or likely to result in disturbance, discuss what proportion of animals exposed are likely to respond and the nature and duration of their response.

Marking: Describe anticipated responses of marked individuals of each proposed species to the application of the mark (*e.g.*, flipper tag, branding, etc.). Discuss known or possible effects of the mark on survival (including impacts on foraging ability and predator avoidance) and reproduction of the animal. Also indicate whether the marking method is known or likely to result in pain, infection, injury, or mortality. Include information on healing time where applicable. If infection or

mortality is possible, indicate what proportion of animals subjected to the proposed procedure is likely to develop infection or die.

Sample Collection: Describe anticipated responses of individuals of each proposed species to each type of sampling method (*e.g.*, venipuncture, tissue biopsy, tooth pulling), and healing time where applicable. Also indicate whether the sampling methods are known or likely to result in pain, infection, or mortality. If infection or mortality is possible, indicate what proportion of animals subjected to the proposed procedure is likely to develop an infection or die.

Scientific Instruments: Describe anticipated responses of individuals of each proposed species to both the instrument attachment method and the presence of the instrument itself. For external instruments, include effects of drag. Also include a discussion, providing references, of known or possible effects of the instrument on movement, survival (including impacts on foraging ability and predator avoidance), and reproduction of the animal. If placing instruments on/in lactating mammals, discuss known or possible effects of the instrument on the female's ability to care for her dependent young. Indicate whether the tag attachment method is known or likely to result in stress, pain, injury, infection, or mortality. Also indicate whether the presence of the tag is known or likely to result in injury or infection.

2. Measures to minimize effects

For each activity, describe all measures to be taken to minimize adverse effects and to ensure that the taking will be conducted in a humane manner, with minimal disturbance and/or harm. For example: Describe measures that would be taken to minimize the potential for stress, pain, injury, infection, and mortality during capture, restraint, and intrusive procedures. If using sedatives or immobilizing agents, discuss measures that would be taken if an animal had an adverse reaction to the drug. For acoustic work, describe measures that would be taken to minimize the potential for disturbance, injury, and mortality from exposure to the sound. Indicate measures that would be taken to minimize any incidental disturbance of non-target animals and any potential adverse reactions, including the potential for injury or death (*e.g.*, from a stampede).

3. Monitoring effects of activities

Indicate any post-handling or post-disturbance monitoring procedures that would be conducted to evaluate the effects of the research and/or to ensure animals have recovered from research activities.

4. Alternatives

If the proposed research or enhancement activities will or may cause stress, pain, suffering, injury, or mortality, you must explain why there are no feasible alternative methods for obtaining the data or information being sought.

For research on marine mammals, and if the protocols have been approved, submit the Institutional Animal Care and Use Committee (IACUC) signed approval for the

activities proposed in this application and include any comments from the IACUC. The PI, CIs, or other individuals listed in this application cannot vote during the IACUC review of the application (9 CFR 2.31 (d)). If the protocols have not been approved, indicate why.

Note that Animal Welfare Act requirements for IACUC's apply to all research facilities. "Research facilities" are defined in APHIS regulations (9 CFR 1.1) to mean "any school (except an elementary or secondary school), institution, organization, or person that uses or intends to use live animals in research, tests, or experiments, and that (1) purchases or transports live animals in commerce, or (2) receives funds under a grant, award, loan, or contract from a department, agency, or instrumentality of the United States for the purpose of carrying out research, tests, or experiments..." Under this definition, a researcher may qualify as a "research facility" even if animals are not brought into captivity. Also, based on APHIS regulations (9 CFR 1.1 and 2(d)(1)) a field study that "involves an invasive procedure, harms, or materially alters the behavior of an animal under study" is subject to IACUC review and approval. Therefore, for research involving captive mammals in laboratory or other traditional settings, or invasive, harmful, or behaviorally altering procedures on marine mammals in the field, written approval by the applicant's IACUC or equivalent committee, must be submitted with the application to assist NMFS and other reviewers in determining whether the proposed research is humane as required by the Marine Mammal Protection Act.

As additional support for choice of species, numbers of animals, and methodologies, applicants are encouraged to submit a copy of the protocols that will or have been submitted to their IACUC.

E. Resources needed to accomplish objectives

Attach copies of any relevant formal research proposals, contracts, or letters of agreement that would demonstrate the financial or logistical resources available to the applicant to conduct and complete the proposed activities. Include the name and address of sponsors, cooperating institutions/researchers, or contractors. Explain any coordination that will occur with these or other individuals or organizations to minimize duplication in effort (*i.e.*, take).

F. Publication of Results

Indicate where and, if possible, when, the research results would be published or otherwise made available to the public and the scientific community.

V. National Environmental Policy Act Considerations

Under the National Environmental Policy Act (NEPA), NMFS is required to determine whether issuance of your proposed permit would, in combination with other factors, result in significant cumulative impacts on the human environment, which includes the biological components of the environment. In order for NMFS to make this determination, your application must contain sufficient information to conclude whether an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required, or if the research and/or enhancement permit is categorically excluded from the requirement to prepare an EA or EIS. Please answer, to the best of your knowledge, the following questions. Note that a simple “yes” or “no” is not sufficient. Please provide a detailed explanation for each response. The information below will be used along with the information you have provided on the types of activities proposed and their effects on animals in determining the potential impacts of your research on the environment.

1. Will your research or enhancement activity involve equipment (e.g., scientific instruments) or techniques that are new, or may be considered innovative or experimental? If yes, are they likely to be adopted by other researchers in the future?
2. Does your activity involve the collection, handling, or transport of potentially infectious agents or pathogens (e.g., biological specimens such as blood), and/or does your activity involve the use or transport of hazardous substances (e.g., toxic chemicals)? If so, provide a description of protocols to be used to ensure human safety from injury or zoonotic disease transmission. Does your proposed research involve animal handling or dangerous work conditions? If so, explain and provide protocols that would be followed to ensure human safety.
3. Would any of your activities occur in or near unique geographic area such as wetlands, National Marine Sanctuaries, Marine Protected Areas, State National Parks or wilderness areas, wildlife refuges, wild and scenic rivers, designated critical habitat for endangered species, essential fish habitat, etc.? If so, would any aspect of your activities impact the physical environment, such as by direct alteration of substrate (e.g., bottom trawling, net setting, anchoring vessels or buoys, erecting blinds or other structures, disrupting nesting bird habitat, etc.)?
4. Do you know if your work could affect entities listed in or eligible for listing in the National Register of Historic Places, or cause loss or destruction of scientific, cultural, or historic resources (e.g., archeological resources, species used for subsistence purposes, etc.)? Explain.
5. Would any of your proposed activities include actions that might involve the transportation of any material, biological or otherwise, from one area to another (e.g., transport of animals or tissues, ballast water discharge, working in sensitive remote areas, etc.). If so, please explain the types of activities and indicate any measure you would take to prevent the possible introduction or spread of non-indigenous or invasive species (including plants, animals, microbes, or other biological agents).

VI. Previous and Other Permits

A. Previous Permits

If the applicant, PI, or CIs have been issued previous permits for the taking, import, or export of species under NMFS jurisdiction, indicate permit numbers and ensure that all reports required to date have been submitted. Applications for new permits or permit amendments/modifications cannot be processed until all reporting requirements for previous permits have been satisfied.

B. Other Permits

State Parks or Reserves, National Marine Sanctuaries, National Parks, etc., may also require you to obtain a permit for activities within their jurisdiction. It is your responsibility to obtain these additional permits. These permits may place restrictions or requirements on your activities in addition to any NMFS may impose under the ESA or MMPA.

Indicate whether any other Federal, State, or local permits (*e.g.*, USFWS, National Marine Sanctuaries, the Army Corps of Engineers, National Park Service, etc.) are necessary and have been sought in connection with the requested research or enhancement activities. If so, indicate what permits are required and have been sought or issued.

Note that research in the coastal zone surrounding various states including Alabama, Hawaii, Washington, and Guam and the Commonwealth of the Northern Marianas, must meet the criteria for Coastal Zone Consistency before a permit can be issued. These jurisdictions have up to six months to make a determination of consistency. It is the applicant's responsibility to seek this determination. Please state in if such a determination has been sought and when a decision is expected.

VII. References

This is the bibliography for the entire application. Complete citations are required for any referenced material cited, and must include: the names of all authors, article title, book or journal title, volume number, page numbers, year of publication, name and location of publisher. For technical memorandum, thesis, or other similar publications, sufficient information should be provided to allow for document retrieval.

Please note that all referenced materials must be made available to the Permits Division upon request, as needed for evaluation of the application, or preparation of any necessary ESA and/or NEPA analyses.

VIII. Certification and Signature

The following Certification, followed by the signature, name, and title of the applicant or Responsible Party, must be submitted as the concluding section of the application. Note that the list of statutes (ESA, MMPA, and FSA) in this certification should correspond to those indicated in your application title.

"I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under one or more of the following statutes and the regulations promulgated there under, as indicated in Section I of this application:

The Endangered Species Act of 1973 (16 U.S.C. 1531-1543) and regulations (50 CFR Part 222); and/or

The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations (50 CFR Part 216); and/or

The Fur Seal Act of 1966 (16 U.S.C. 1151-1175).

I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties provided under the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

Signature of Applicant and Date of Signature

Typed or Printed Name of Applicant

Title of Applicant

Additional Information:

Under section 104(c) of the MMPA and section 10(a)(1)(A) of the ESA, persons may be authorized to take marine mammals and threatened and endangered species, respectively, for purposes of scientific research or enhancing the survival of the species. Interested persons are required to submit an application in accordance with the Acts and the implementing regulations at 50 CFR part 216, subpart D, and 50 CFR part 222. These regulations are available at the following web site: <http://www.gpo.gov/>. MMPA section 104 is available at: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>. ESA section 10(a)(1)(A) is available at: http://www.nmfs.noaa.gov/pr/pdfs/laws/esa_section10.pdf.

The information requested in this application is required and is used to determine whether the activities described in the application are consistent with the purposes and policies of the Acts and their implementing regulations.

Public reporting burden for this collection of information is estimated to average 32 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

All permit documentation, including the application, permit and amendments, reports, inventory information, and any other associated documents are considered public information and as such, are subject to the Freedom of Information Act.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

APPENDIX I - RELEVANT STATUTES

Animal Welfare Act

The Animal Welfare Act (AWA) (U.S.C. 2131 *et seq.*) was enacted in 1966 to “(insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) assure the humane treatment of animals during transportation in commerce; and (3) protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.”

The U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (USDA/APHIS), has responsibility under the AWA for captive warm-blooded animals, including marine mammals. APHIS has established regulations and standards for animal care, including “Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals” (9 CFR Ch.1, Subpart E).

Most U.S. facilities maintaining animals as defined under the AWA, including marine mammals, are required to be licensed or registered by APHIS. For information concerning the AWA and its requirements and the name and address of the Veterinarian in Charge in the State concerned, contact the Regulatory Enforcement and Animal Care staff, USDA/APHIS (301/734-7833) or visit <http://www.aphis.usda.gov/>

Your application will be forwarded to APHIS for review and comment if your research or enhancement activities involve (1) the use of captive marine mammals, including marine mammals in rehabilitation, and/or (2) free-ranging animals if substantial AWA issues are identified during the initial review of the application.

Note: To ensure that the proposed research is humane and does not present unnecessary risks to the health and welfare of marine, you will be asked to provide a copy of the protocols submitted to and approved by your institution’s Animal Care and Use Committee prior to authorization of research to be conducted on captive (including rehabilitating) animals and/or any intrusive procedures to be conducted on captive or free-ranging animals.

Endangered Species Act

The Endangered Species Act (ESA) (7 U.S.C. 16; 16 U.S.C. 4660 *et seq.*) was enacted in 1973 to conserve threatened and endangered plants and animals and their habitats. The law prohibits any action that results in a “taking⁴” of a listed species, or that adversely affects its habitat. The law also prohibits the import, export, and interstate and foreign commerce of listed species with the appropriate authorizations.

Section 7 Consultation: Under Section 7 of the ESA, all federal agencies are required, “in consultation with and with the assistance of the Secretary, to insure that any action

⁴ Take (as defined in the ESA): *To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.*

authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.” Thus, before the Permits Division can recommend issuance of a permit to take threatened or endangered species, it must consult with the NMFS Endangered Species Division and obtain “a written statement setting forth the Secretary’s opinion and a summary of the information on which the opinion is based” that the issuance of the permit is not likely to jeopardize any protected species.” This written statement is known as a biological opinion. Consultation involves the Permits Division providing an “initiation package” to the Endangered Species Division. The initiation package consists of 1) a description of the action being considered (in the application and proposed permit); 2) a description of the specific area that may be affected by the action (i.e., the action area); 3) a description of any ESA-listed species or critical habitat that may be affected by the action (including the species name, listed status, distribution, status and trend of the population, why it was listed, existing threats, range-wide distribution at the species level, and whether critical habitat is involved); 4) a description of the manner in which the action may affect any ESA-listed species or critical habitat, and an analysis of cumulative effects; 5) relevant reports, including any Environmental Analysis, Environmental Impact Statements, Biological Assessments, or other analyses prepared on the proposal; and 6) any other relevant studies or information available on the action, the affected species, or critical habitat (this includes permit annual reports, most recent publications, etc.).

The information the applicant provides in the permit application is necessary for the ESA Section 7 consultation process. In some cases, the Permits Division may have to contact the applicant for clarifying or additional information during this process.

Freedom of Information Act

The Freedom of Information Act (FOIA) (5 U.S.C. 552) was enacted in 1966 to ensure that the federal government makes government information available to the public when requested. Certain restrictions apply to the release of information (e.g., classified documents).

Fur Seal Act

The Fur Seal Act (FSA) (16 U.S.C. 1151-1187) was enacted in 1966 to prohibit the taking of North Pacific fur seals, except by Alaska natives for subsistence purposes or by a permit issued by NMFS. NMFS’ regulations implementing the Fur Seal Act can be found at 50 CFR Part 215.

Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361-1407) was enacted in 1972 in partial response to growing concerns among scientists and the general public that certain species and populations of marine mammals were in danger of extinction or depletion as a result of human activities. The Act includes a general moratorium on the taking⁵ and importing of marine mammals, which is subject to a number of exceptions. The Act also established the Marine Mammal Commission and provides the authority under which the Commission operates.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) was enacted in 1969 to ensure that the government gives proper consideration to the environment prior to undertaking any major federal action that could significantly affect the environment. Issuance of a permit is considered a major federal action and NMFS is required to comply with NEPA. Some applications may require additional environmental analyses under NEPA, which can substantially increase the time required for processing. If a threatened or endangered species is involved in a proposed research or enhancement activity, if the activity is considered controversial, or under other certain circumstances, preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) may be necessary. If an application does not contain sufficient information on the environmental impact of the proposed activity to determine whether an EA/EIS is necessary, or if the information is insufficient to complete such analyses, the application may be returned to the applicant or processing may be delayed.

The applicant may submit a draft EA with the application to facilitate processing. The Permits Division will review and accept a draft EA if it is determined to be sufficient. Otherwise, the Permits Division will prepare an EA or EIS on the potential environmental impacts of the proposed research using the description of the activities provided in the application and the best available information on the effects of such activities. Depending on workload, resources, and the complexity of the research proposal, preparation of an EA may take six months or more. Preparation of a final EIS typically takes well over a year. Please contact the Permits Division for guidance regarding whether or not an EA or EIS is needed.

⁵ Take (as defined in the MMPA): *To harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes by regulatory definition, without limitation, any of the following: the collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.*

APPENDIX II - PERMITS/AUTHORIZATIONS UNDER THE MARINE MAMMAL PROTECTION ACT (MMPA) AND/OR ENDANGERED SPECIES ACT (ESA)

The MMPA and the ESA provide for the following types of permits/authorizations:

1. Scientific Research and/or Enhancement under the MMPA and/or ESA for Marine Mammals Under the Jurisdiction of the National Marine Fisheries Service (NMFS) (i.e., cetaceans and pinnipeds (except walruses))
2. Scientific Research and/or Enhancement under the MMPA and/or ESA for Marine Mammals Under the Jurisdiction of the U.S. Fish and Wildlife Service (USFWS) (i.e., sea and marine otters, polar bears, walruses, manatees, and dugongs)
3. Commercial/Educational Photography of Marine Mammals under the MMPA
4. Public Display of Marine Mammals under the MMPA
5. Importation of Pre-MMPA Marine Mammal Parts (i.e., parts taken prior to 1972)
6. Receipt of Marine Mammal Parts from the NMFS Stranding Network under the MMPA
7. Incidental Take Permits/Authorizations under the MMPA and/or ESA
8. Scientific Research or Enhancement Purposes under the ESA Involving Salmon
9. Scientific Research or Enhancement purposes under the ESA involving Sea Turtles in the Water (NMFS jurisdiction)
10. Scientific Research or Enhancement Purposes under the ESA involving Sea Turtles on Land (FWS jurisdiction)

Scientific Research and/or Enhancement under the MMPA and/or ESA for Marine Mammals under the Jurisdiction of the NMFS and/or USFWS

Under Section 104 of the MMPA, permits may be issued for the taking of marine mammals for scientific research and/or enhancement purposes. Section 104 states, among other things, that applications for scientific research must provide information indicating that the proposed research is *bona fide* (i.e., scientific research on marine mammals, the results of which – likely would be accepted for publication in a referred scientific journal; are likely to contribute to the basic knowledge of marine mammal biology or ecology; or are likely to identify, evaluate, or resolve conservation problems). The section also states that: applications involving the lethal take of a marine mammal must demonstrate that a nonlethal method of conducting the research is not feasible; and permits involving the lethal taking of a marine mammal from a species or stock that is considered depleted under the MMPA cannot be issued unless the permitting agency determines that the results of such research will directly benefit the species or stock, or that such research fulfills a critically important research need.

NMFS may authorize the use of healthy rehabilitated beached/stranded marine mammals for research purposes in lieu of taking animals from wild populations (50 CFR 216.27). Where a captive marine mammal is necessary for the conduct of scientific research, particularly in the case of U.S. coastal pinnipeds, such as California sea lions (*Zalophus californianus*), applicant must justify the need for capturing animals from the wild rather than obtaining them from rehabilitated beached/stranded stock. For information on the availability of these

animals contact the appropriate NMFS Regional Office:
<http://www.nmfs.noaa.gov/pr/health/coordinators.htm>

The USFWS maintains jurisdiction over beached/stranded sea turtles and sea turtles in rehabilitation. Please contact the USFWS Division of Management Authority at (800) 358-2104 with any questions regarding stranded sea turtles.

Commercial or Educational Photography Permits

The 1994 amendments to the MMPA provided new authority to issue permits for educational and commercial photography involving only Level B harassment⁶ of non-ESA listed marine mammals⁷. Presently, NMFS is reviewing such applications on a pilot basis and may publish a Proposed Rule in the *Federal Register* based in part on the information obtained from these applications (50 CFR 216.42). The commercial photography applications instructions can be obtained at the following web site:

http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm#photo

Please Note: These permits apply only to commercial or educational photography of non-ESA listed species under the MMPA with methods involving Level B harassment. These permits do not provide any authorization for activities involving ESA-listed species, methods involving Level A harassment⁴, or scientific research.

Public Display of Marine Mammals

Public display permits are required for the capture of marine mammals in the wild or for the importation of marine mammals for purposes of public display. Applications for a public display permit can be found at

http://www.nmfs.noaa.gov/pr/permits/mmpa_permits.htm#display or by calling the Permits Division at (301) 713-2289.

A permit is not required for the public display of marine mammals. Public display of marine mammals is based on three criteria. Facilities holding and maintaining marine mammals for public display purposes must: (1) maintain facilities that are open to the public on a regularly scheduled basis with access that is not limited or restricted other than by charging an admission fee; (2) offer a program of education or conservation that is based on professionally recognized standards of the public display community; and (3) be registered or

⁶ Harassment (as defined in the MMPA) – *Any act of pursuit, torment, or annoyance which - 1) Level A harassment: has the potential to injure a marine mammal or marine mammal stock in the wild; or 2) Level B harassment: has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.*

⁷ A list of marine mammal species and information on the status of the species under the ESA is available at the following web site:

http://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm.

hold an exhibitor's license, issued by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA/APHIS), under the Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*).

Permits are not issued for the exportation of marine mammals for public display. The receiving holder/facility must meet standards that are comparable to those applicable to domestic facilities and/or permit holders under the MMPA, and the appropriate agency of the foreign government must submit a statement certifying that: (1) the application is accurate; (2) the laws and regulations of the government involved have equivalent provisions to the MMPA and AWA, and that such laws will be enforced; and (3) the government will provide comity to requests made by NMFS (e.g., requests to enforce the requirements of the MMPA or comparable laws with respect to the facility).

A stranded marine mammal that has been classified as non-releasable may be held for the purposes of public display without a permit and in accordance to the three public display criteria. A permit is required to hold a releasable marine mammal in captivity for any purpose including public display.

Importation of Pre-MMPA Marine Mammal Parts (i.e., parts taken prior to 1972)

Marine mammal parts include any part of a marine mammal, both hard and soft, but do not include urine or feces. A letter of authorization is required for importing or exporting "pre-Act" marine mammal parts under NMFS jurisdiction for commercial or personal use. Pre-Act parts are either those marine mammal parts taken prior to enactment of the MMPA or those parts of species listed under the ESA that are at least 100 years old. Instructions for how to apply for authorization to import or export pre-Act marine mammal parts may be found at: http://www.nmfs.noaa.gov/pr/permits/parts_instructions.htm.

Receipt of Marine Mammal Parts from the NMFS Stranding Network under the MMPA

If you would like to receive marine mammal parts taken from stranded marine mammals after 1972 for use in scientific research, education, or curation, please contact the appropriate NMFS Stranding Network Coordinator at <http://www.nmfs.noaa.gov/pr/health/coordinators.htm>. *Note that if you intend to develop cell lines from such parts for research purposes, you must apply for a scientific research permit using the application instructions for scientific research purposes.*

Incidental Take Permits/Authorizations under the MMPA and/or ESA

If you are conducting a non-research related activity that may affect marine mammals or ESA-listed species, you may need an incidental harassment authorization, incidental take permit, or coverage through the ESA Section 7 process (and issuance of an incidental take statement under section 7(b)(4)). If you are conducting research on animals incidentally taken during some other activity (i.e., the capture is not part of your research), you must ensure that the animals have been taken legally. For example, if you are going to sample

(e.g., tag, measure, tissue sample) sea turtles that have been already taken (e.g., captured) incidentally during the course of some other activity (e.g., a fishery) you need to make sure that the capture of the turtles was legal. In this instance it would be appropriate to request a research permit to conduct the tagging, measuring and tissue sampling, but not for the capture. To determine what type of coverage you would need, visit the following web sites:

<http://www.nmfs.noaa.gov/pr/permits/guide.htm>

<http://www.nmfs.noaa.gov/pr/permits/incidental.htm>

http://www.nmfs.noaa.gov/pr/permits/esa_permits.htm

Sea Turtle Research and Enhancement Permits under the ESA

Permits to conduct research or enhancement activities on endangered or threatened sea turtles are issued by NMFS (for turtles in the water) and by FWS (for turtles on land). Application instructions for sea turtles on land can be obtained by calling the USFWS Division of Management Authority at (800) 358-2104 or by visiting their web site at

<http://permits.fws.gov/>.

Salmon Research and Enhancement Permits under the ESA

Permits to conduct research or enhancement on endangered or threatened salmon are issued by the NMFS Northwest and Southwest Regional Offices. Information may be obtained by visiting their web sites: Northwest Region main page: <http://www.nwr.noaa.gov> and the Southwest Region main page: <http://swfsc.nmfs.noaa.gov> or by calling the Endangered Species Division, Office of Protected Resources at (301) 713-1401 for further information.

APPENDIX III - DEFINITIONS

Acute behavioral response - Repeated, prolonged or excessive instances of behavior, brought on by any act or omission of the researcher and manifested by, among other actions on the part of an animal, a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; interruptions of breeding, nursing, or resting activities, attempts by a whale to shield a calf from a vessel or human observer by tail swishing or by other protective movement; movement away from researchers by pinnipeds, including a stampede; or the abandonment of a previously frequented area.

Animal and Plant Health Inspection Service (APHIS) – Part of the U.S. Department of Agriculture that has responsibility for administering the provisions of the Animal Welfare Act to regulate the care and treatment of warm blooded animals bred for commercial sale, used in research, transported commercially, or exhibited to the public, except those animals used for agricultural purposes, and has established regulations and standards for animal care, including “Specifications for the Humane Handling, Care, Treatment, and Transportation of Marine Mammals” (9 CFR Ch. 1, Subpart E).

Animal Welfare Act (AWA; 7 U.S.C. 2131 *et seq.*) – Federal statute created in 1966 to “(1) insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) assure the humane treatment of animals during transportation in commerce; and (3) protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen.”

Applicant/ Permit Holder - Person, institution, or agency that is ultimately responsible for all activities of any individual who is operating under the authority of the permit. NOTE: there can be only one person/institution/agency designated as the Applicant/Permit Holder.

Approach – For the purposes of cetacean research: a continuous sequence of maneuvers (episode) involving a vessel, aircraft, or researcher's body in the water, including drifting, directed toward a cetacean or group of cetaceans for the purposes of conducting authorized research which involves one or more instances of coming closer than 100 yards to that cetacean or group of cetaceans.

Attempt - An effort made to accomplish some permitted activity (for example, a tag or biopsy dart deployment from a crossbow, air gun, or pole that may or may not result in a successful deployment).

Biological Opinion – Under Section 7 of the Endangered Species Act, all federal agencies are required, “in consultation with and with the assistance of the Secretary, to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of designated critical habitat.” Thus, before the NMFS Permits Division can issue a permit to take threatened or endangered species, it must consult with the NMFS Endangered Species Division and obtain “a written statement setting forth the

Secretary's opinion and a summary of the information on which the opinion is based" that the issuance of the permit is not likely to jeopardize any protected species."

Bona fide scientific research (as defined under the MMPA) - Scientific research on marine mammals conducted by qualified personnel, the results of which: 1) likely would be accepted for publication in a refereed scientific journal; 2) are likely to contribute to the basic knowledge of marine mammal biology or ecology; or 3) are likely to identify, evaluate or resolve conservation problems. Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition.

Code of Federal Regulations (CFR) – Regulations created by various federal agencies to support and explain federal statutes. The NMFS and USFWS have created wildlife and fisheries regulations to support and clarify sections of the MMPA and ESA (50 CFR 1 – 599). Specifically, parts 17, 18, 216, 222-226, and 402 are applicable to research and enhancement permits for marine mammals and endangered and threatened species under NMFS and USFWS jurisdiction.

Co-investigator (CI) - The on-site representative of a Principal Investigator (PI) who has qualifications comparable to the PI and who is authorized to conduct or directly supervise the conduct of the taking, import, and export activities authorized under a permit. There can be numerous CIs designated under a single permit. For example, there could be separate CIs in charge of distinct activities/projects under a permit, or responsible for distinct geographic areas under a permit.

Distinct Population Segment (DPS) - A Distinct Population Segment is a portion of a species or subspecies population or range. The DPS is generally described geographically instead of biologically, such as "all members of XYZ species that occur north of 40E north latitude."

Enhancement permits - Permits "issued for the recovery of a species or stock where taking or importation: a) is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and b) is consistent with any conservation plan adopted by the Secretary (NMFS or USFWS) for the species or stock, or if there is no conservation or recovery plan in place, with the Secretary's evaluation of action required to enhance the survival or recovery of the species or stock..."

Evolutionary Significant Unit (ESU) - A section of a population that is 1) reproductively isolated from other conspecific population units, or 2) represents an important component in the evolutionary history of a species.

Flipper tag – A plastic or metal tag attached to the flipper of a sea turtle, phocid, or otariid. These tags are attached by piercing a hole through the flipper and/or permanently clipping them shut.

Handling/restraint time - The amount of time that an animal is physically handled (*i.e.*, weighed, measured, tagged, biopsied, etc.).

Harassment (as defined in the MMPA) – Any act of pursuit, torment, or annoyance that 1) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or 2) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing a disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Harassment includes the disruption of the normal behavior or prior activity of an animal by any act or omission. This disruption of normal behavior may be manifested by, among other actions on the part of the animal, interruptions of breeding, nursing, or resting activities; a rapid change in direction or speed; escape tactics such as prolonged diving, underwater course changes, underwater exhalation, or evasive swimming patterns; attempts by a cetacean to shield a calf from a vessel or human observer by tail swishing or by other protective movement; movement away from researchers by pinnipeds, including a stampede; or the abandonment of a previously frequented area.

Hard parts - Any bone, tooth, baleen, treated pelt, or other part of an animal that is relatively solid or durable.

Holding time - The time from capture to the time of release.

Humane (as defined in the MMPA) - The method of taking, import, export, or other activity that involves the least possible degree of pain and suffering practicable to the animal involved.

Intrusive research (as defined under the MMPA) - A procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and directly affect animal tissue (*i.e.*, chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (*i.e.*, audio broadcasts directed at animals that may affect behavior). For captive animals, this definition does not include: 1) A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or 2) A procedure involving either the introduction of a substance or object (*i.e.*, as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

Live car - A tank of flowing and/or oxygenated water on a boat or shore where fish are placed to keep them alive.

Marine Mammal Commission – The Marine Mammal Commission is an independent agency of the U.S. Government, established under Title II of the Marine Mammal Protection Act. In enacting the Act in 1972, Congress recognized that those federal agencies with

primary regulatory responsibility for marine mammal programs may have potentially conflicting missions and had, in some instances, failed to prevent the over harvesting and endangerment of stocks. Thus, the Marine Mammal Commission was created to provide independent oversight of the marine mammal conservation policies and programs being carried out by the federal regulatory agencies. The Commission is charged with developing, reviewing, and making recommendations on domestic and international actions and policies of all federal agencies with respect to marine mammal protection and conservation and with carrying out a research program.

Net checking - A complete and thorough visual check of a net either by snorkeling the net in clear water or by pulling up on the top line such that the full depth of the net is viewed along the entire length.

Permit Holder - Person, institution, or agency that is ultimately responsible for all activities of any individual who is operating under the authority of the permit.

PIT tag - Passive integrated transponder tags. These tags are internally read by scanning with a special reader.

Ports, Designated -

<u>DESIGNATED PORTS</u>	
U.S. Customs ports designated for the importation or exportation of wildlife	
Anchorage, AK	Louisville, KY
Atlanta, GA	Memphis, TN
Baltimore, MD	Miami, FL
Boston, MD	New Orleans, LA
Chicago, IL	Newark, NJ
Dallas/Ft. Worth, TX	New York, NY
Houston, TX	Portland, OR
Honolulu, HI	San Francisco, CA
Los Angeles, CA	Seattle, WA

Principal Investigator (PI) - The individual primarily responsible for the taking, importation, exportation, and any related activities conducted under a permit issued for scientific research or enhancement purposes. The PI must have qualifications, knowledge and experience relevant to the type of research activities authorized by the permit

Rehabilitation (as defined under the MMPA) - Treatment of beached and stranded marine mammals taken under section 109(h) of the MMPA with the intent of restoring the marine mammal's health and, if necessary, behavioral patterns, for release back to the wild.

Researchers – Researchers include the Permit Holder, Principal Investigator, and Co-investigator(s).

Research Assistant (RA) - Individual who is not yet experienced enough to qualify as Principal Investigator (PI) or Co-investigator (CI), and who therefore works under the direct and on-site supervision of the CI or PI. The qualifications and experiences of the RA must be commensurate with his/her assigned responsibilities. If the RA is to operate a boat, they must be licensed or highly experienced in operating vessels.

Responsible Party - The Responsible Party is an official who has the legal authority to bind the organization. For applications where it is requested that the permit be issued to an organization/institution/agency rather than an individual, the application must be signed by the Responsible Party. In addition, the permit, which is a legally binding document, must be signed by the Responsible Party to validate it.

Sanctuary net - A fish net that holds water during transfer.

Secretary – The Secretary of Secretary of Commerce (NMFS) or the Secretary of the Interior (USFWS).

Serious injury - Any injury that will likely result in a mortality.

Soft parts - Any part that is not a hard part, *e.g.* blood, blubber, or other tissue samples. Soft parts do not include urine or fecal material.

Stranded marine mammal (as defined under the MMPA) - A marine mammal specimen under the jurisdiction of the Secretary of Commerce, if: 1) the specimen is dead and is on a beach or shore, or is in the water within the Exclusive Economic Zone of the U.S.; or 2) the specimen is alive, and is on a beach or shore and is unable to return to the water, or is in the water within the Exclusive Economic Zone of the U.S. where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

Take – As defined in the MMPA: To harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes by regulatory definition, without limitation, any of the following: the collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild. As defined in the ESA: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

Take table - An outline, by species, age, and sex, of the type of activities authorized over a specified time period, the number of takes per activity, the number of takes per individual, and the location of takes and activities.

Trotline - A fishing line that lays on the bottom of a river or bay, usually with smaller lines off it. Bait is attached at various points along the line.

APPENDIX IV - NMFS REGIONAL OFFICES

Region	Regional Jurisdiction
Alaska Region, P.O. Box 21668 Juneau, AK 99802-1668 Tel (907)586-7221; fax (907)586-7249	Alaska [including Arctic Ocean, Bering, Beaufort, Chukchi Seas]
Northwest Region 7600 Sand Point Way NE, BIN C15700 Seattle, WA 98115-0700 Tel (206)526-6150; fax (206)526-6426	Washington, Oregon, Montana, Idaho, Wyoming, Utah, Colorado, North Dakota, South Dakota
Southwest Region 501 West Ocean Blvd., Suite 4200 Long Beach, CA 90802-4213 Tel (562)980-4001; fax (562)980-4018	California, Nevada, Arizona
Northeast Region One Blackburn Drive Gloucester, MA 01930-2298 Tel (978)281-9200; fax (978)281-9371	Maine, Vermont, New Hampshire, Massachusetts, New York, Connecticut, New Jersey, Delaware, Rhode Island, Maryland, District of Columbia, Virginia, West Virginia, Ohio, Pennsylvania, Indiana, Michigan, Minnesota, Illinois, Wisconsin
Southeast Region 263 13 th Avenue South St. Petersburg, FL 33701 Tel (727)824-5312; fax (727)824-5309	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Tennessee, Kentucky, Arkansas, Missouri, Iowa, Nebraska, Kansas, Oklahoma
Pacific Islands Region 1601 Kapiolani Blvd., Room 1110 Honolulu, HI 96814-4700 Tel (808)973-2937; fax (808)973-2941	Hawaii, U.S. Pacific Islands [including American Samoa, Guam, Northern Mariana Islands]

Interim Photography Permit Application Requirements

Under the Marine Mammal Protection Act (MMPA) [Section 104(c)(6)], a permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild.

This permit only applies to photography of non-listed marine mammals (i.e., those species *not* listed as endangered or threatened under the Endangered Species Act (ESA)). Photography activities must not exceed Level B harassment¹. Photography permits are not issued for any marine mammals listed as endangered or threatened under the ESA. Please contact the Permits, Conservation and Education Division at (301) 713-2289 for inquiries regarding photography of ESA-listed species.

Application Instructions for Photography [50 CFR 216.42, Reserved] have not yet been proposed, but applicants are provided with the following interim guidance for photography permit applications. This guidance is similar to that required for the General Authorization since the type of take and level of harassment authorized under these special exception permits and authorizations are similar in nature. The submitted application will be forwarded to the Marine Mammal Commission for review, and notice of receipt of the application will be published in the *Federal Register* for a 30-day public comment period.

An original photography permit application signed by the applicant, one copy of the completed and signed application, and an electronic copy of the application must be submitted to:

Chief, Permits Conservation and Education Division
Office of Protected Resources, F/PR1
NOAA/National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
Phone: (301) 713-2289
Fax: (301) 427-2521

Please contact the Permits Division at the number above if you have any questions regarding preparation of an application for a photography permit.

¹ **Harassment:** Under the 1994 Amendments to the MMPA, harassment is statutorily defined as, any act of pursuit, torment, or annoyance which—
(Level A harassment) has the potential to injure a marine mammal or marine mammal stock in the wild; or,
(Level B harassment) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Marine Mammal Photography Permit Application

1. The date of the application.
2. The identity and qualifications of the applicant and any other persons to be directly involved in the taking. A mailing address, phone number, and e-mail address for the applicant is required. Qualifications: For each person to be authorized under the photography permit, indicate what their duties would be. A curriculum vitae, resume, or summary of qualifications for each individual must be provided and must include a list of accomplishments and experience relevant to the proposed activity each person will be performing.
3. The species or stocks of marine mammals that may be photographed and harassed, and any other species that may be affected by the activities. The description must include the species name (common and scientific names), number of animals that may be taken during photographic activities, and the number of times the animals may be taken within a specified time period.
4. The geographic area(s) in which the photography will be conducted. Include information on whether any areas are protected (e.g., National Marine Sanctuaries, State Reserves, etc.).
5. The time period over which the photography will be conducted, including field seasons if appropriate, and also the duration of the overall photography project.
6. The rationale and objectives for such activity and how the products are expected to be made available to the public.
7. Type of photography to be performed and methods to be used to conduct the photography, including but not limited to platforms to be used, description of photographic equipment, deployment techniques if applicable, approach distances to animals, etc., and a justification that such activities will result in only taking by Level B harassment of marine mammals.

NOTE: NMFS may determine that certain activities, such as underwater photography or filming activities, may exceed Level B harassment. In these cases, the activities would not be authorized.

8. A description of the effects (i.e., how animals will react) of the proposed photography on the subject marine mammals and any other species that may be incidentally affected during the proposed activities.

9. The application must be signed, dated and certified by the applicant as follows:

"I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and regulations (50 CFR Part 216). I also understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties provided under the Endangered Species Act of 1973, the Marine Mammal Protection Act of 1972, or the Fur Seal Act of 1966, whichever are applicable."

Signature of Applicant and Date of Signature

Typed or Printed Name of Applicant

Title of Applicant

Species List: Please check for scientific names and verification that the intended target species is not listed as threatened and endangered under the ESA. Please contact the Permits Division for more information. The species list can be found on-line at:
http://apps.nmfs.noaa.gov/docs_cfm/species_lists.cfm.

Additional Information:

The information requested in this application is required and is used to determine whether the proposed activity is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment, whether the photography methods are adequate to meet the project objectives, whether the applicants are qualified to carry out the proposed activities, and the manner in which the products of such activities will be made available to the public.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

The permit application and any associated documents, including any reports required under the permit, are considered public information and as such, are subject to the Freedom of Information Act.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

PRA justification for information requested in photography permit application:

50 CFR 216.42 reserved for photography provisions not codified; section 104(c)(6) of the MMPA as amended by P.L. 103-238. The Application instructions for commercial and education photography applicants reflect the 1994 amendments to the MMPA. Section 104(c)(6) of the MMPA was amended to allow level B harassment of marine mammals while being photographed.

Sections 1-3 above correspond to those in the Applications Instructions for scientific research and public display permits. The Certification in section 8 is the same as that in those permits.

Location of take is necessary for NOAA Fisheries to determine whether the take is occurring in a protected area, such as designated critical habitat or a sanctuary for marine species, and to assess cumulative impacts. Also, permits are normally issued for a 5-year period which provides a basis to determine whether it is likely that the objectives will be met during the time allotted and with the available resources. Section 104(b)(1)(C) requires that permits specify the period during which the permit is valid and the location of take.

Without a rationale for the application, NMFS would be unaware of the applicant's need for a permit; without the information, NMFS, the Marine Mammal Commission, and public interests would be unable to determine whether the taking is necessary, humane and in the best interest of both protected species and for the public at large. NMFS' ability to issue permits without receiving adequate information from applicants is questionable.

Section 104(b) of the MMPA requires permits to specify the number and kind of marine mammals authorized to be taken, the manner and location of the taking, and the period of validity for the permit. Also, under Section 104(c)(1) of the MMPA requires permits to specify the methods of capture, supervision, care and transportation and that the taking is consistent with the purposes of the MMPA.

Instructions for Submitting a “Letter of Intent” under the General Authorization for Scientific Research

Under the Marine Mammal Protection Act (MMPA), the General Authorization (GA) applies to scientific research studies on marine mammals for activities involving only Level B harassment¹ of non-listed marine mammals (i.e., those species *not* listed as endangered or threatened under the Endangered Species Act (ESA)). Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA and MMPA.

Any person intending to take marine mammals in the wild via Level B harassment for the purposes of *bona fide* scientific research² under the GA must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits, Conservation and Education Division (see address below). The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). The principal investigator is the individual who is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

The following types of research activities will likely qualify for inclusion under the GA: photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft.) of non-ESA listed marine mammals.

Requirements for applying for a GA included in these instructions are pursuant to federal regulations implementing the MMPA [50 CFR 216.45] and MMPA section 104(c)(3)(C). If you have any questions about applying for a GA, call the Permits Division at (301) 713-2289.

¹ **Harassment:** Under the 1994 Amendments to the MMPA, harassment is statutorily defined as, any act of pursuit, torment, or annoyance which—

(Level A harassment) has the potential to injure a marine mammal or marine mammal stock in the wild; or,

(Level B harassment) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

² ***Bona fide* scientific research:** Scientific research conducted by qualified personnel, the results of which—

- likely would be accepted for publication in a refereed scientific journal;
- are likely to contribute to the basic knowledge of marine mammal biology; or
- are likely to identify, evaluate, or resolve conservation problems.

General Authorization Letter of Intent

National Marine Fisheries Service (NMFS) regulations under the Marine Mammal Protection Act at 50 CFR 216.45(b) require that General Authorization “Letters of Intent” contain the following information:

1. The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s)³ to be conducting the proposed research, and curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research.

NOTE: The curriculum vitae, resume, or summary of qualifications for each individual must include a list of accomplishments and experience relevant to the proposed activities each person will be performing.

2. The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research.
3. The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.
4. The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable.
5. The purpose of the research, including a description of how the proposed research qualifies as “*bona fide* scientific research.”

NOTE: This should include but is not limited to the following information: scientific questions and objectives; how the research relates to 1) the current body of knowledge on the subject species and 2) past NMFS permitted research conducted by the applicant, if applicable.

6. The methods to be used to conduct the research.

NOTE: This should include but is not limited to the following information: sample size, methods or protocols to meet objectives of research, approach distances and frequencies, number of crew during field research, etc. NMFS may determine that specific proposed activities (e.g., underwater research activities, such as photography and filming; aerial surveys over pinniped rookeries) may exceed Level B harassment. In these cases, the applicant will be notified that a permit is required.

³ **Co-investigator** means the on-site representative of a principal investigator.

7. The “Letter of Intent” must be signed, dated, and certified by the applicant as follows:

“In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 et seq.) and implementing regulations (50 CFR part 216) I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.”

Please send an original, signed General Authorization “Letter of Intent” to the following address:

Chief, Permits Division, Conservation and Education Division
Office of Protected Resources, F/PR1
NOAA/National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
Phone: (301) 713-2289
Fax: (301) 427-2521

No later than 30 days after receipt of a letter of intent, NMFS will issue a letter to the applicant either:

- (1) Confirming that the GA applies to the proposed scientific research as described in the letter of intent;
- (2) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the GA, and that a scientific research permit is required to conduct all or part of the subject research; or
- (3) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined above.

Additional Information:

Under section 104(c)(3)(C) of the MMPA, as amended, persons may be authorized to take marine mammals in the wild by Level B harassment, as defined in 50 CFR 216.3, for purposes of *bona fide* scientific research. Interested persons are required to submit a letter of intent in accordance with the interim final rule published on October 3, 1994 and submit certain information outlined at 50 CFR 216.45(b) under the General Authorization and provided in these instructions. Regulations implementing the GA may be found at 50 CFR 216.45 [59 FR 50376, Oct. 3, 1994] and are available at the following web site: <http://www.gpo.gov/>. MMPA section 104 is available at the following web site: <http://www.nmfs.noaa.gov/pr/pdfs/laws/mmpa104.pdf>.

The information requested in this application is required and is used to determine whether the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and whether a scientific research permit is required to conduct all or part of the subject research; and whether the research as described in the letter of intent is *bona fide*.

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Chief, Permits Conservation and Education Division, Office of Protected Resources, F/PR1, NOAA/National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

The letter of intent and any associated documents, including any reports required under the GA, are considered public information and as such, are subject to the Freedom of Information Act.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Permits

16 U.S.C. 1374

Sec. 104. (a) [ISSUANCE.] — The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections 101(a)(5) or 306, or subsection (h) of this section.

(b) [REQUISITE PROVISIONS.] — Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 103 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) [IMPORTATION FOR DISPLAY OR RESEARCH.] —

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally

recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this Act, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(I) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(II) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(III) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this Act. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A) (i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with section 104(e), seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this Act for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [August 28, 1994], the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

(i) The species or stocks of marine mammals which may be harassed.

(ii) The geographic location of the research.

(iii) The period of time over which the research will be conducted.

(iv) The purpose of the research, including a description of how the definition of bona fide research as established under this Act would apply.

(v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general

authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent (I) with any conservation plan adopted by the Secretary under section 115(b) of this title or any recovery plan developed under section 4(f) of the Endangered Species Act of 1973 for the species or stock, or (II) if there is no conservation or recovery plan in place, with the Secretary's evaluation of actions required to enhance the survival or recovery of the species or stock in light to the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada, to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 113(d).

(C)(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after the date of enactment of this paragraph [April 30, 1996]. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2), issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before the date of enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994], to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 101 and 102. This subparagraph shall not apply to polar bear parts that were imported before the effective date of this subparagraph [June 12, 1997].

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this Act and which is determined under guidance under section 402(a) not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before the date of the enactment of the Marine Mammal Protection Act Amendments of 1994 [April 30, 1994] and held in captivity for the purpose of public display shall be treated as though born after that date of enactment.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this Act:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) [APPLICATION PROCEDURES; NOTICE; HEARING; REVIEW.] —

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this Act and the applicable regulations established under section 103 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall (A) issue a permit containing such terms and conditions as he deems appropriate, or (B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of Title 5, United States Code, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) [MODIFICATION, SUSPENSION, AND REVOCATION.] —

(1) The Secretary may modify, suspend, or revoke in whole or part any permit issued by him under this

section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 103 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) [POSSESSION OF PERMIT BY ISSUEE OR HIS AGENT.] — Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) [FEES.] — The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) [GENERAL PERMITS.] — (1) Consistent with the regulations prescribed pursuant to section 103 of this title and the requirements of section 101 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 306 of this Act, subject to the regulations issued pursuant to section 303 of this Act.

(3)(A) The Secretary shall, commencing on January 1, 1985, undertake a scientific research program to monitor for at least five consecutive years, and periodically as necessary thereafter, the indices of abundance and trends of marine mammal population stocks which are incidentally taken in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean.

(B) If the Secretary determines, on the basis of the best scientific information available (including that obtained under the monitoring program), that the incidental taking of marine mammals permitted under the general permit referred to in paragraph (2) is having a significant adverse effect on a marine mammal population stock, the Secretary shall take such action as is necessary, after notice and an opportunity for an agency hearing on the record, to modify the applicable incidental take quotas or requirements for gear and fishing practices (or both such quotas and requirements) for such fishing so as to ensure that the marine mammal population stock is not significantly adversely affected by the incidental taking.

(C) For each year after 1984, the Secretary shall include in his annual report to the public and the Congress under section 103(f) a discussion of the proposed activities to be conducted each year as part of the monitoring program required by subparagraph (A).

(D) There are authorized to be appropriated to the Department of Commerce for purposes of carrying out the monitoring program required under this paragraph not to exceed \$4,000,000 for the period beginning October 1, 1984, and ending September 30, 1988.

SUBCHAPTER A—GENERAL PROVISIONS [RESERVED]
SUBCHAPTER B—NORTH PACIFIC COMMERCIAL FISHERIES
[RESERVED]
SUBCHAPTER C—MARINE MAMMALS

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

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 - 216.181 Effective dates.
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 - 216.188 Letters of Authorization.
 - 216.189 Renewal of Letters of Authorization.
 - 216.190 Modifications to Letters of Authorization.
 - 216.191 Designation of Biologically Important Marine Mammal Areas.
- NOTE TO PART 216: See also 50 CFR parts 228 and 229 for regulations governing certain incidental takings of marine mammals.

AUTHORITY: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

SOURCE: 39 FR 1852, Jan. 15, 1974, unless otherwise noted.

Subpart A—Introduction

§216.1 Purpose of regulations.

The regulations in this part implement the Marine Mammal Protection Act of 1972, 86 Stat. 1027, 16 U.S.C. 1361–1407, Pub. L. 92–522, which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals.

§216.2 Scope of regulations.

This part 216 applies solely to marine mammals and marine mammal products as defined in §216.3. For regulations under the MMPA, with respect to other marine mammals and marine mammal products, see 50 CFR part 18.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, Oct. 3, 1994]

§216.3 Definitions.

In addition to definitions contained in the MMPA, and unless the context otherwise requires, in this part 216:

Acts means, collectively, the Marine Mammal Protection Act of 1972, as

amended, 16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, and the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Active sportfishing means paying passengers have their terminal fishing gear (lures, hooks, etc.) in the water in an attempt to catch fish or, in the case of fishing involving chumming, fishing is considered to be in progress from the instant fish have been sighted taking bait (boiling) during that chumming process.

Administrator, Southwest Region means the Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, or his or her designee.

Agreement on the International Dolphin Conservation Program (Agreement on the IDCP) means the Agreement establishing the formal binding IDCP that was signed in Washington, DC on May 21, 1998.

Alaskan Native means a person defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)) (85 Stat. 588) as a citizen of the United States who is of one-fourth degree or more Alaska Indian (including Tsimishian Indians enrolled or not enrolled in the Metlaktila Indian Community), Eskimo, or Aleut blood or combination thereof. The term includes any Native, as so defined, either or both of whose adoptive parents are not Natives. It also includes, in the absence of proof of a minimum blood quantum, any citizen of the United States who is regarded as an Alaska Native by the Native village or group, of which he claims to be a member and whose father or mother is (or, if deceased, was) regarded as Native by any Native village or Native group. Any such citizen enrolled by the Secretary of the Interior pursuant to section 5 of the Alaska Native Claims Settlement Act shall be conclusively presumed to be an Alaskan Native for purposes of this part.

Article of handicraft means items made by an Indian, Aleut or Eskimo from the nonedible byproducts of fur seals taken for personal or family consumption which—

(1) Were commonly produced by Alaskan Natives on or before October 14, 1983;

(2) Are composed wholly or in some significant respect of natural materials, and;

(3) Are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Assistant Administrator means the Assistant Administrator for Fisheries, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, or his/her designee.

Authentic native articles of handicrafts and clothing means items made by an Indian, Aleut or Eskimo which (a) were commonly produced on or before December 21, 1972, and (b) are composed wholly or in some significant respect of natural materials, and (c) are significantly altered from their natural form and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or similar mass copying devices. Improved methods of production utilizing modern implements such as sewing machines or modern tanning techniques at a tannery registered pursuant to §216.23(c) may be used so long as no large scale mass production industry results. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting. The formation of traditional native groups, such as a cooperative, is permitted so long as no large scale mass production results.

Bona fide scientific research: (1) Means scientific research on marine mammals conducted by qualified personnel, the results of which:

(i) Likely would be accepted for publication in a refereed scientific journal;

(ii) Are likely to contribute to the basic knowledge of marine mammal biology or ecology. (Note: This includes, for example, marine mammal parts in a properly curated, professionally accredited scientific collection); or

(iii) Are likely to identify, evaluate, or resolve conservation problems.

(2) Research that is not on marine mammals, but that may incidentally take marine mammals, is not included in this definition (see sections 101(a)(3)(A), 101(a)(5)(A), and 101(a)(5)(D) of the MMPA, and sections 7(b)(4) and 10(a)(1)(B) of the ESA).

Carrying capacity means the Regional Director's determination of the maximum amount of fish that a vessel can carry in short tons based on the greater of the amount indicated by the builder of the vessel, a marine surveyor's report, or the highest amount reported landed from any one trip.

Certified charter vessel means a fishing vessel of a non-U.S. flag nation, which is operating under the jurisdiction of the marine mammal laws and regulations of another, harvesting, nation by a formal declaration entered into by mutual agreement of the nations.

Co-investigator means the on-site representative of a principal investigator.

Commercial fishing operation means the lawful harvesting of fish from the marine environment for profit as part of an ongoing business enterprise. Such terms may include licensed commercial passenger fishing vessel (as defined) activities, but no other sport-fishing activities, whether or not the fish so caught are subsequently sold.

Commercial passenger fishing vessel means any vessel licensed for commercial passenger fishing purposes within the State out of which it is operating and from which, while under charter or hire, persons are legally permitted to conduct sportfishing activities.

Custody means holding a live marine mammal pursuant to the conditional authority granted under the MMPA, and the responsibility therein for cap-

tive maintenance of the marine mammal.

Declaration of Panama means the declaration signed in Panama City, Republic of Panama, on October 4, 1995.

Director, Office of Protected Resources means Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

Dolphin Mortality Limit (DML) means the maximum allowable number of incidental dolphin mortalities per calendar year assigned to a vessel, unless a shorter time period is specified.

Endangered Species means a species or subspecies of marine mammal listed as "endangered" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205 (see part 17 of this title).

ESA means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

ETP means the eastern tropical Pacific Ocean which includes the Pacific Ocean area bounded by 40° N. latitude, 40° S. latitude, 160° W. longitude and the coastlines of North, Central and South America.

Facility means, in the context specific to captive marine mammals: (1) One or more permanent primary enclosures used to hold marine mammals captive (i.e., pools, lagoons) and associated infrastructure (i.e., equipment and supplies necessary for the care and maintenance of marine mammals) where these enclosures are either located within the boundaries of a single contiguous parcel of land and water, or are grouped together within the same general area within which enclosure-to-enclosure transport is expected to be completed in less than one hour; or

(2) A traveling display/exhibit, where the enclosure(s) and associated infrastructure is transported together with the marine mammals.

Feeding is offering, giving, or attempting to give food or non-food items to marine mammals in the wild. It includes operating a vessel or providing other platforms from which feeding is conducted or supported. It does not include the routine discard of bycatch during fishing operations or the routine discharge of waste or fish byproducts from fish processing plants or other platforms if the discharge is

otherwise legal and is incidental to operation of the activity.

First exporter means the person or company that first exports the fish or fish product, or, in the case of shipments that are subject to the labeling requirements of 50 CFR part 247 and that only contain fish harvested by vessels of the United States, the first seller of the fish or fish product.

Fisheries Certificate of Origin, or FCO, means NOAA Form 370, as described in §216.24(f)(4).

Force majeure means forces outside the vessel operator's or vessel owner's control that could not be avoided by the exercise of due care.

FSA means the Fur Seal Act of 1966, as amended, 16 U.S.C. 1151 *et seq.*

Fur seal means North Pacific fur seal, scientifically known as *Callorhinus ursinus*.

Hard part means any bone, tooth, baleen, treated pelt, or other part of a marine mammal that is relatively solid or durable.

Harvesting nation means the country under whose flag one or more fishing vessels are documented, or which has by formal declaration agreed to assert jurisdiction over one or more certified charter vessels, from which vessel(s) fish are caught that are a part of any cargo or shipment of fish to be imported into the United States, regardless of any intervening transshipments.

Humane means the method of taking, import, export, or other activity which involves the least possible degree of pain and suffering practicable to the animal involved.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the Customs laws of the United States; except that, for the purpose of any ban issued under 16 U.S.C. 1371(a)(2) on the importation of fish or fish products, the definition of "import" in §216.24(f)(1)(ii) shall apply.

Incidental catch means the taking of a marine mammal (1) because it is directly interfering with commercial fishing operations, or (2) as a consequence of the steps used to secure the

fish in connection with commercial fishing operations: *Provided*, That a marine mammal so taken must immediately be returned to the sea with a minimum of injury and further, that the taking of a marine mammal, which otherwise meets the requirements of this definition shall not be considered an incidental catch of that mammal if it is used subsequently to assist in commercial fishing operations.

Intentional purse seine set means that a tuna purse seine vessel or associated vessels chase marine mammals and subsequently make a purse seine set.

International Dolphin Conservation Program (IDCP) means the international program established by the agreement signed in La Jolla, California, in June 1992, as formalized, modified, and enhanced in accordance with the Declaration of Panama and the Agreement on the IDCP.

International Dolphin Conservation Program Act (IDCPA) means Public Law 105-42, enacted into law on August 15, 1997.

International Review Panel (IRP) means the International Review Panel established by the Agreement on the IDCP.

Intrusive research means a procedure conducted for bona fide scientific research involving: A break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animal's immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (i.e., chemical substances), or a stimulus directed at animals that may involve a risk to health or welfare or that may have an impact on normal function or behavior (i.e., audio broadcasts directed at animals that may affect behavior). For captive animals, this definition does not include:

(1) A procedure conducted by the professional staff of the holding facility or an attending veterinarian for purposes of animal husbandry, care, maintenance, or treatment, or a routine medical procedure that, in the reasonable judgment of the attending veterinarian, would not constitute a risk to the health or welfare of the captive animal; or

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(2) A procedure involving either the introduction of a substance or object (i.e., as described in this definition) or a stimulus directed at animals that, in the reasonable judgment of the attending veterinarian, would not involve a risk to the health or welfare of the captive animal.

Label means a display of written, printed, or graphic matter on or affixed to the immediate container of any article.

Land or *landing* means to begin off-loading any fish, to arrive in port with the intention of offloading fish, or to cause any fish to be offloaded.

Large-scale driftnet means a gillnet that is composed of a panel or panels of webbing, or a series of such gillnets, with a total length of 2.5 kilometers or more that is used on the high seas and allowed to drift with the currents and winds for the purpose of harvesting fish by entangling the fish in the webbing of the net.

Level A Harassment means any act of pursuit, torment, or annoyance which has the potential to injure a marine mammal or marine mammal stock in the wild.

Level B Harassment means any act of pursuit, torment, or annoyance which has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering but which does not have the potential to injure a marine mammal or marine mammal stock in the wild.

Marine environment means the oceans and the seas, including estuarine and brackish waters.

Marine mammal means those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales, dolphins, and porpoises) and Pinnipedia, other than walrus (seals and sea lions).

MMPA means the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1361 *et seq.*

Native village or town means any community, association, tribe, band, clan or group.

Optimum sustainable population is a population size which falls within a range from the population level of a given species or stock which is the largest supportable within the ecosystem to the population level that results in maximum net productivity. Maximum net productivity is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.

Per-stock per-year dolphin mortality limit means the maximum allowable number of incidental dolphin mortalities and serious injuries from a specified stock per calendar year, as established under the IDCP.

Pregnant means pregnant near term.

Pribilovians means Indians, Aleuts, and Eskimos who live on the Pribilof Islands.

Principal investigator means the individual primarily responsible for the taking, importation, export, and any related activities conducted under a permit issued for scientific research or enhancement purposes.

Public display means an activity that provides opportunities for the public to view living marine mammals at a facility holding marine mammals captive.

Regional Director means the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930; or Regional Administrator, Northwest Regional Office, NMFS, 7600 Sandpoint Way, N.E., Building 1, Seattle, WA 98115; or Regional Administrator, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; or Regional Administrator, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802; or Regional Administrator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814; or Regional Administrator, Alaska Regional Office, NMFS, PO Box 21668, Juneau, AK 99802.

Rehabilitation means treatment of beached and stranded marine mammals taken under section 109(h)(1) of the MMPA or imported under section 109(h)(2) of the MMPA, with the intent of restoring the marine mammal's

health and, if necessary, behavioral patterns.

Secretary shall mean the Secretary of Commerce or his authorized representative.

Serious injury means any injury that will likely result in mortality.

Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other verbal and physical conduct of a sexual nature which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Soft part means any marine mammal part that is not a hard part. Soft parts do not include urine or fecal material.

South Pacific Ocean means any waters of the Pacific Ocean that lie south of the equator.

South Pacific Tuna Treaty means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (50 CFR part 300, subpart D).

Stranded or *stranded marine mammal* means a marine mammal specimen under the jurisdiction of the Secretary:

(1) If the specimen is dead, and is on a beach or shore, or is in the water within the Exclusive Economic Zone of the United States; or

(2) If the specimen is alive, and is on a beach or shore and is unable to return to the water, or is in the water within the Exclusive Economic Zone of the United States where the water is so shallow that the specimen is unable to return to its natural habitat under its own power.

Subsistence means the use of marine mammals taken by Alaskan Natives for food, clothing, shelter, heating, transportation, and other uses necessary to maintain the life of the taker or those who depend upon the taker to provide them with such subsistence.

Subsistence uses means the customary and traditional uses of fur seals taken by Pribilovians for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fur seals taken for personal or family consumption; and for barter, or

sharing for personal or family consumption. As used in this definition—

(1) *Family* means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(2) *Barter* means the exchange of fur seals or their parts, taken for subsistence uses—

(i) For other wildlife or fish or their parts, or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

Take means to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal. This includes, without limitation, any of the following: The collection of dead animals, or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild.

Threatened species means a species of marine mammal listed as "threatened" pursuant to the Endangered Species Act of 1973, 87 Stat. 884, Pub. L. 93-205.

Trip means a voyage starting when a vessel leaves port with all fish wells empty of fish and ending when a vessel unloads all of its fish.

Tuna product means any food product processed for retail sale and intended for human or animal consumption that contains an item listed in §216.24(f)(2)(i) or (ii), but does not include perishable items with a shelf life of less than 3 days.

Wasteful manner means any taking or method of taking which is likely to result in the killing of marine mammals beyond those needed for subsistence, subsistence uses, or for the making of authentic native articles of handicrafts and clothing, or which results in the waste of a substantial portion of the marine mammal and includes, without limitation, the employment of a method of taking which is not likely to assure the capture or killing of a marine mammal, or which is not immediately

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followed by a reasonable effort to retrieve the marine mammal.

[39 FR 1852, Jan. 15, 1974]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §216.3, see the List of Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§216.4 Other laws and regulations.

(a) *Federal*. Nothing in this part, nor any permit issued under authority of this part, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of the United States, including any applicable statutes or regulations relating to wildlife and fisheries, health, quarantine, agriculture, or customs.

(b) *State laws or regulations*. See part 403 of this chapter.

[39 FR 1852, Jan. 15, 1974, as amended at 41 FR 36662, Aug. 31, 1976; 58 FR 65134, Dec. 13, 1993]

§216.5 Payment of penalty.

The respondent shall have 30 days from receipt of the final assessment decision within which to pay the penalty assessed. Upon a failure to pay the penalty, the Secretary may request the Attorney General to institute a civil action in the appropriate United States District Court to collect the penalty.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981]

§216.6 Forfeiture and return of seized property.

(a) Whenever any cargo or marine mammal or marine mammal product has been seized pursuant to section 107 of the MMPA, the Secretary shall expedite any proceedings commenced under these regulations.

(b) Whenever a civil penalty has been assessed by the Secretary under these regulations, any cargo, marine mammal, or marine mammal product seized pursuant to section 107 of the MMPA shall be subject to forfeiture. If respondent voluntarily forfeits any such seized property or the monetary value thereof without court proceedings, the Secretary may apply the value thereof, if any, as determined by the Secretary, toward payment of the civil penalty.

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(c) Whenever a civil penalty has been assessed under these regulations, and whether or not such penalty has been paid, the Secretary may request the Attorney General to institute a civil action in an appropriate United States District Court to compel forfeiture of such seized property or the monetary value thereof to the Secretary for disposition by him in such manner as he deems appropriate. If no judicial action to compel forfeiture is commenced within 30 days after final decision-making assessment of a civil penalty, pursuant to §216.60, such seized property shall immediately be returned to the respondent.

(d) If the final decision of the Secretary under these regulations is that respondent has committed no violation of the MMPA or of any permit or regulations issued thereunder, any marine mammal, marine mammal product, or other cargo seized from respondent in connection with the proceedings under these regulations, or the bond or other monetary value substituted therefor, shall immediately be returned to the respondent.

(e) If the Attorney General commences criminal proceedings pursuant to section 105(b) of the MMPA, and such proceedings result in a finding that the person accused is not guilty of a criminal violation of the MMPA, the Secretary may institute proceedings for the assessment of a civil penalty under this part: *Provided*, That if no such civil penalty proceedings have been commenced by the Secretary within 30 days following the final disposition of the criminal case, any property seized pursuant to section 107 of the MMPA shall be returned to the respondent.

(f) If any seized property is to be returned to the respondent, the Regional Director shall issue a letter authorizing such return. This letter shall be dispatched to the respondent by registered mail, return receipt requested, and shall identify the respondent, the seized property, and, if appropriate, the bailee of the seized property. It shall also provide that upon presentation of the letter and proper identification, the seized property is authorized to be released. All charges for storage, care,

or handling of the seized property accruing 5 days or more after the date of the return receipt shall be for the account of the respondent: *Provided*, That if it is the final decision of the Secretary under these regulations that the respondent has committed the alleged violation, all charges which have accrued for the storage, care, or handling of the seized property shall be for the account of the respondent.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 59 FR 50375, Oct. 3, 1994]

§ 216.7 Holding and bonding.

(a) Any marine mammal, marine mammal product, or other cargo seized pursuant to section 107 of the MMPA shall be delivered to the appropriate Regional Director of the National Marine Fisheries Service (see § 201.2 of this title) or his designee, who shall either hold such seized property or arrange for the proper handling and care of such seized property.

(b) Any arrangement for the handling and care of seized property shall be in writing and shall state the compensation to be paid. Subpart F of 15 CFR part 904 contains additional procedures that govern seized property that is subject to forfeiture or has been forfeited under the MMPA.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 50 FR 12785, Apr. 1, 1985; 59 FR 50375, Oct. 3, 1994]

§ 216.8 Enforcement officers.

Enforcement Agents of the National Marine Fisheries Service shall enforce the provisions of the MMPA and may take any actions authorized by the MMPA with respect to enforcement. In addition, the Secretary may utilize, by agreement, the personnel, services, and facilities of any other Federal Agency for the purposes of enforcing this MMPA. Pursuant to the terms of section 107(b) of the MMPA, the Secretary may also designate officers and employees of any State or of any possession of the United States to enforce the provisions of this MMPA.

[39 FR 1852, Jan. 15, 1974. Redesignated at 46 FR 61652, Dec. 18, 1981, and amended at 59 FR 50375, Oct. 3, 1994]

Subpart B—Prohibitions

§ 216.11 Prohibited taking.

Except as otherwise provided in subparts C, D, and I of this part 216 or in part 228 or 229, it is unlawful for:

(a) Any person, vessel, or conveyance subject to the jurisdiction of the United States to take any marine mammal on the high seas, or

(b) Any person, vessel, or conveyance to take any marine mammal in waters or on lands under the jurisdiction of the United States, or

(c) Any person subject to the jurisdiction of the United States to take any marine mammal during the moratorium.

[39 FR 1852, Jan. 15, 1974, as amended at 47 FR 21254, May 18, 1982; 54 FR 21921, May 19, 1989]

§ 216.12 Prohibited importation.

(a) Except as otherwise provided in subparts C and D of this part 216, it is unlawful for any person to import any marine mammal or marine mammal product into the United States.

(b) Regardless of whether an importation is otherwise authorized pursuant to subparts C and D of this part 216, it is unlawful for any person to import into the United States any:

(1) Marine mammal:

(i) Taken in violation of the MMPA, or

(ii) Taken in another country in violation to the laws of that country;

(2) Any marine mammal product if

(i) The importation into the United States of the marine mammal from which such product is made would be unlawful under paragraph (b)(1) of this section, or

(ii) The sale in commerce of such product in the country of origin if the product is illegal.

(c) Except in accordance with an exception referred to in subpart C and §§ 216.31 (regarding scientific research permits only) and 216.32 of this part 216, it is unlawful to import into the United States any:

(1) Marine mammal which was pregnant at the time of taking.

(2) Marine mammal which was nursing at the time of taking, or less than 8 months old, whichever occurs later.

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(3) Specimen of an endangered or threatened species of marine mammal.

(4) Specimen taken from a depleted species or stock of marine mammals, or

(5) Marine mammal taken in an inhumane manner.

(d) It is unlawful to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if such fish was caught in a manner proscribed by the Secretary of Commerce for persons subject to the jurisdiction of the United States, whether or not any marine mammals were in fact taken incident to the catching of the fish.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, Oct. 3, 1994]

§216.13 Prohibited uses, possession, transportation, sales, and permits.

It is unlawful for:

(a) Any person to use any port, harbor or other place under the jurisdiction of the United States for any purpose in any way connected with a prohibited taking or an unlawful importation of any marine mammal or marine mammal product; or

(b) Any person subject to the jurisdiction of the United States to possess any marine mammal taken in violation of the MMPA or these regulations, or to transport, sell, or offer for sale any such marine mammal or any marine mammal product made from any such mammal.

(c) Any person subject to the jurisdiction of the United States to use in a commercial fishery, any means or method of fishing in contravention of regulations and limitations issued by the Secretary of Commerce for that fishery to achieve the purposes of this MMPA.

(d) Any person to violate any term, condition, or restriction of any permit issued by the Secretary.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, 50376, Oct. 3, 1994; 61 FR 21933, May 10, 1996]

§216.14 Marine mammals taken before the MMPA.

(a) Section 102(e) of the MMPA provides, in effect, that the MMPA shall not apply to any marine mammal taken prior to December 21, 1972, or to any marine mammal product, con-

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sisting of or composed in whole or in part of, any marine mammal taken before that date. This prior status of any marine mammal or marine mammal product may be established by submitting to the Director, National Marine Fisheries Service prior to, or at the time of importation, an affidavit containing the following:

(1) The Affiant's name and address;

(2) Identification of the Affiant;

(3) A description of the marine mammals or marine mammal products which the Affiant desires to import;

(4) A statement by the Affiant that, to the best of his knowledge and belief, the marine mammals involved in the application were taken prior to December 21, 1972;

(5) A statement by the Affiant in the following language:

The foregoing is principally based on the attached exhibits which, to the best of my knowledge and belief, are complete, true and correct. I understand that this affidavit is being submitted for the purpose of inducing the Federal Government to permit the importation of—under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statements may subject me to the criminal penalties of 13 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(b) Either one of two exhibits shall be attached to such affidavit, and will contain either:

(1) Records or other available evidence showing that the product consists of or is composed in whole or in part of marine mammals taken prior to the effective date of the MMPA. Such records or other evidentiary material must include information on how, when, where, and by whom the animals were taken, what processing has taken place since taking, and the date and location of such processing; or

(2) A statement from a government agency of the country of origin exercising jurisdiction over marine mammals that any and all such mammals from which the products sought to be imported were derived were taken prior to December 21, 1972.

(c) No pre-Act marine mammal or pre-Act marine mammal product may be imported unless the requirements of this section have been fulfilled.

(d) This section has no application to any marine mammal or marine mammal product intended to be imported pursuant to §§ 216.21, 216.31 or § 216.32.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50375, 50376, Oct. 3, 1994]

§ 216.15 Depleted species.

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the MMPA.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

(c) North Pacific fur seal (*Callorhinus ursinus*). Pribilof Island population.

(d) Bottlenose dolphin (*Tursiops truncatus*), coastal-migratory stock along the U.S. mid-Atlantic coast.

(e) Eastern spinner dolphin (*Stenella longirostris orientalis*).

(f) Northeastern offshore spotted dolphin (*Stenella attenuata*).

(g) Cook Inlet, Alaska, stock of beluga whales (*Delphinapterus leucas*). The stock includes all beluga whales occurring in waters of the Gulf of Alaska north of 58° North latitude including, but not limited to, Cook Inlet, Kamishak Bay, Chinitna Bay, Tuxedni Bay, Prince William Sound, Yakutat Bay, Shelikof Strait, and off Kodiak Island and freshwater tributaries to these waters.

(h) Eastern North Pacific Southern Resident stock of killer whales (*Orcinus orca*). The stock includes all resident killer whales in pods J, K, and L in the waters of, but not limited to, the inland waterways of southern British Columbia and Washington, including the Georgia Strait, the Strait of Juan de Fuca, and Puget Sound.

(i) AT1 stock of killer whales (*Orcinus orca*). The stock includes all killer whales belonging to the AT1 group of transient killer whales occurring primarily in waters of Prince William Sound, Resurrection Bay, and the Kenai Fjords region of Alaska.

[53 FR 17899, May 18, 1988, as amended at 58 FR 17791, Apr. 6, 1993; 58 FR 45074, Aug. 26, 1993; 58 FR 58297, Nov. 1, 1993; 59 FR 50376, Oct. 3, 1994; 65 FR 34597, May 31, 2000; 68 FR 31983, May 29, 2003; 69 FR 31324, June 3, 2004]

§ 216.16 Prohibitions under the General Authorization for Level B harassment for scientific research.

It shall be unlawful for any person to:

(a) Provide false information in a letter of intent submitted pursuant to § 216.45(b);

(b) Violate any term or condition imposed pursuant to § 216.45(d).

[59 FR 50376, Oct. 3, 1994]

§ 216.17 General prohibitions.

It is unlawful for any person to:

(a) Assault, resist, oppose, impede, intimidate, threaten, or interfere with any authorized officer in the conduct of any search, inspection, investigation or seizure in connection with enforcement of the MMPA, DPCIA, or IDCPA.

(b) Interfere with, delay, or prevent by any means the apprehension of another person, knowing that such person has committed any act prohibited by the MMPA.

(c) Resist a lawful arrest for any act prohibited under the MMPA.

(d) Make any false statement, oral or written, to an authorized officer concerning any act under the jurisdiction of the MMPA, DPCIA, IDCPA, or attempt to do any of the above.

(e) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the MMPA, DPCIA, or IDCPA.

[70 FR 19008, Apr. 12, 2005]

Subpart C—General Exceptions

§ 216.21 Actions permitted by international treaty, convention, or agreement.

The MMPA and these regulations shall not apply to the extent that they are inconsistent with the provisions of any international treaty, convention or agreement, or any statute implementing the same relating to the taking or importation of marine mammals or marine mammal products, which was existing and in force prior to December 21, 1972, and to which the United States was a party. Specifically, the regulations in subpart B of this part and the provisions of the MMPA shall not apply to activities

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carried out pursuant to the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, and the Fur Seal Act of 1966, 16 U.S.C. 1151 through 1187, as in each case, from time to time amended.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994]

§216.22 Taking by State or local government officials.

(a) A State or local government official or employee may take a marine mammal in the normal course of his duties as an official or employee, and no permit shall be required, if such taking:

(1) Is accomplished in a humane manner;

(2) Is for the protection or welfare of such mammal or for the protection of the public health or welfare; and

(3) Includes steps designed to insure return of such mammal, if not killed in the course of such taking, to its natural habitat. In addition, any such official or employee may, incidental to such taking, possess and transport, but not sell or offer for sale, such mammal and use any port, harbor, or other place under the jurisdiction of the United States. All steps reasonably practicable under the circumstances shall be taken by any such employee or official to prevent injury or death to the marine mammal as the result of such taking. Where the marine mammal in question is injured or sick, it shall be permissible to place it in temporary captivity until such time as it is able to be returned to its natural habitat. It shall be permissible to dispose of a carcass of a marine mammal taken in accordance with this subsection whether the animal is dead at the time of taking or dies subsequent thereto.

(b) Each taking permitted under this section shall be included in a written report to be submitted to the Secretary every six months beginning December 31, 1973. Unless otherwise permitted by the Secretary, the report shall contain a description of:

(1) The animal involved;

(2) The circumstances requiring the taking;

(3) The method of taking;

(4) The name and official position of the State official or employee involved;

(5) The disposition of the animal, including in cases where the animal has been retained in captivity, a description of the place and means of confinement and the measures taken for its maintenance and care; and

(6) Such other information as the Secretary may require.

(c) Salvage of dead stranded marine mammals or parts therefrom and subsequent transfer.

(1) *Salvage.* In the performance of official duties, a state or local government employee; an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; or a person authorized under 16 U.S.C. 1382(c) may take and salvage a marine mammal specimen if it is stranded and dead or it was stranded or rescued and died during treatment, transport, captivity or other rehabilitation subsequent to that stranding or distress if salvage is for the purpose of utilization in scientific research or for the purpose of maintenance in a properly curated, professionally accredited scientific collection.

(2) *Registration.* A person salvaging a dead marine mammal specimen under this section must register the salvage of the specimen with the appropriate Regional Office of the National Marine Fisheries Service within 30 days after the taking or death occurs. The registration must include:

(i) The name, address, and any official position of the individual engaged in the taking and salvage;

(ii) A description of the marine mammal specimen salvaged including the scientific and common names of the species;

(iii) A description of the parts salvaged;

(iv) The date and the location of the taking;

(v) Such other information as deemed necessary by the Assistant Administrator.

(3) *Identification and curation.* The Regional Director will assign a single unique number to each carcass, and the parts thereof, that are salvaged under

the provisions of this section. The person who salvaged the specimen may designate the number to be assigned. After this number is assigned, the person who salvaged the specimen must permanently mark that number on each separate hard part of that specimen and must affix that number with tags or labels to each soft part of that specimen or the containers in which that soft part is kept. Each specimen salvaged under this section must be curated in accordance with professional standards.

(4) *No sale or commercial trade.* No person may sell or trade for commercial purposes any marine mammal specimen salvaged under this section.

(5) *Transfer without prior authorization.* A person who salvages a marine mammal specimen under this section may transfer that specimen to another person if:

(i) The person transferring the marine mammal specimen does not receive remuneration for the specimen;

(ii) The person receiving the marine mammal specimen is an employee of the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, or any other Federal agency with jurisdiction and conservation responsibilities in marine shoreline areas; is a person authorized under 16 U.S.C. 1382(c); or is a person who has received prior authorization under paragraph (c)(6) of this section;

(iii) The marine mammal specimen is transferred for the purpose of scientific research, for the purpose of maintenance in a properly curated, professionally accredited scientific collection, or for educational purposes;

(iv) The unique number assigned by the National Marine Fisheries Service is on, marked on, or affixed to the marine mammal specimen or container; and

(v) Except as provided under paragraph (c)(8) of this section, the person transferring the marine mammal specimen notifies the appropriate Regional Office of the National Marine Fisheries Service of the transfer, including notification of the number of the specimen transferred and the person to whom the specimen was transferred, within 30 days after the transfer occurs.

(6) *Other transfers within the United States.* Except as provided under paragraphs (c)(5) and (c)(8) of this section, a person who salvages a marine mammal specimen, or who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to another person within the United States unless the Regional Director of the appropriate Regional Office of the National Marine Fisheries Service grants prior written authorization for the transfer. The Regional Director may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(7) *Transfers outside of the United States.* A person who salvages a marine mammal specimen, or a person who has received a marine mammal specimen under the provisions of this section, may not transfer that specimen to a person outside of the United States unless the Assistant Administrator grants prior written authorization for the transfer. The Assistant Administrator may grant authorization for the transfer if there is evidence that the conditions listed under paragraphs (c)(5)(i), (c)(5)(iii), and (c)(5)(iv) of this section are met.

(8) *Exceptions to requirements for notification or prior authorization.* A person may transfer a marine mammal specimen salvaged under this section without the notification required in paragraph (c)(5)(v) of this section or the prior authorization required in paragraph (c)(6) of this section if:

(i) The transfer is a temporary transfer to a laboratory or research facility within the United States so that analyses can be performed for the person salvaging the specimen; or

(ii) The transfer is a loan of not more than 1 year to another professionally accredited scientific collection within the United States.

[39 FR 1852, Jan. 15, 1974, as amended at 56 FR 41307, Aug. 20, 1991]

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of subpart B of this part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the

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coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

(1) By Alaskan Natives who reside in Alaska for subsistence, or

(2) For purposes of creating and selling authentic native articles of handicraft and clothing, and

(3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or

(ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or

(iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

(i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or

(ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or

(iii) It has first been transformed into an authentic native article of handicraft or clothing; or

(iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply

to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

(i) The name and address of the applicant;

(ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;

(iii) A proposal for a system of book-keeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;

(iv) Such other information as the Secretary may request;

(v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

(vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the MMPA, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section

103 of the MMPA upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

(e) *Marking and reporting of Cook Inlet Beluga Whales.* (1) *Definitions.* In addition to definitions contained in the MMPA and the regulations in this part:

(i) *Reporting* means the collection and delivery of biological data, harvest data, and other information regarding the effect of taking a beluga whale (*Delphinapterus leucas*) from Cook Inlet, as required by NMFS.

(ii) *Whaling captain or vessel operator* means the individual who is identified by Alaskan Natives as the leader of each hunting team (usually the other crew on the boat) and who is the whaling captain; or the individual operating the boat at the time the whale is harvested or transported to the place of processing.

(iii) *Cook Inlet* means all waters of Cook Inlet north of 59° North latitude, including, but not limited to, waters of Kachemak Bay, Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

(2) *Marking.* Each whaling captain or vessel operator, upon killing and landing a beluga whale (*Delphinapterus leucas*) from Cook Inlet, Alaska, must remove the lower left jawbone, leaving the teeth intact and in place. When multiple whales are harvested during one hunting trip, the jawbones will be marked for identification in the field to ensure correct reporting of harvest information by placing a label marked with the date, time, and location of harvest within the container in which the jawbone is placed. The jawbone(s) must be retained by the whaling captain or vessel operator and delivered to NMFS at the Anchorage Field Office, 222 West 7th Avenue, Anchorage, Alaska 99513 within 72 hours of returning from the hunt.

(3) *Reporting.* Upon delivery to NMFS of a jawbone, the whaling captain or vessel operator must complete and mail a reporting form, available from NMFS, to the NMFS Anchorage Field Office within 30 days. A separate form is required for each whale harvested.

(i) To be complete, the form must contain the following information: the

date and location of kill, the method of harvest, and the coloration of the whale. The respondent will also be invited to report on any other observations concerning the animal or circumstance of the harvest.

(ii) Data collected pursuant to paragraph (e) of this section will be reported on forms obtained from the Anchorage Field Office. These data will be maintained in the NMFS Alaska Regional Office in Juneau, Alaska, where such data will be available for public review.

(4) No person may falsify any information required to be set forth on the reporting form as required by paragraph (e) of this section.

(5) The Anchorage Field Office of NMFS is located in room 517 of the Federal Office Building, 222 West 7th Avenue; its mailing address is: NMFS, Box 43, Anchorage, AK. 99513.

(f) *Harvest management of Cook Inlet beluga whales.* (1) *Cooperative management of subsistence harvest.* Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in §216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph "co-management agreement") between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) *Limitations.* (i) *Sale of Cook Inlet beluga whale parts and products.* Authentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) *Beluga whale calves or adults with calves.* The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) *Season.* All takings of beluga whales authorized under §216.23(f) shall occur no earlier than July 1 of each year.

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(iv) *Taking during 2001–2004.* The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) *Strike limitations.* Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) *Strike allocations.* Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4-year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) *Emergency provisions.* Takings of beluga whales authorized under §216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) *Taking during 2005 and subsequent years.* [Reserved]

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 64 FR 27927, May 24, 1999; 69 FR 17980, Apr. 6, 2004]

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§216.24 Taking and related acts incidental to commercial fishing operations by tuna purse seine vessels in the eastern tropical Pacific Ocean.

(a)(1) No marine mammal may be taken in the course of a commercial fishing operation by a U.S. purse seine fishing vessel in the ETP unless the taking constitutes an incidental catch as defined in §216.3, and vessel and operator permits have been obtained in accordance with these regulations, and such taking is not in violation of such permits or regulations.

(2)(i) It is unlawful for any person using a U.S. purse seine fishing vessel of 400 short tons (st) (362.8 metric tons (mt)) carrying capacity or less to intentionally deploy a net on or to encircle dolphins, or to carry more than two speedboats, if any part of its fishing trip is in the ETP.

(ii) It is unlawful for any person using a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that does not have a valid permit obtained under these regulations to catch, possess, or land tuna if any part of the vessel’s fishing trip is in the ETP.

(iii) It is unlawful for any person subject to the jurisdiction of the United States to receive, purchase, or possess tuna caught, possessed, or landed in violation of paragraph (a)(2)(ii) of this section.

(iv) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP when there is not a DML assigned to that vessel.

(v) It is unlawful for any person subject to the jurisdiction of the United States to intentionally deploy a purse seine net on, or to encircle, dolphins from a vessel operating in the ETP with an assigned DML after a set in which the DML assigned to that vessel has been reached or exceeded.

(vi) Alleged violations of the Agreement on the IDCP and/or these regulations identified by the International Review Panel will be considered for potential enforcement action by NMFS.

(3) Upon written request made in advance of entering the ETP, the limitations in paragraphs (a)(2)(i) and (a)(2)(ii) of this section may be waived by the Administrator, Southwest Region, for the purpose of allowing transit through the ETP. The waiver will provide, in writing, the terms and conditions under which the vessel must operate, including a requirement to report to the Administrator, Southwest Region, the vessel's date of exit from or subsequent entry into the permit area.

(b) *Permits*—(1) *Vessel permit*. The owner or managing owner of a U.S. purse seine fishing vessel of greater than 400 st (362.8 mt) carrying capacity that participates in commercial fishing operations in the ETP must possess a valid vessel permit issued under paragraph (b) of this section. This permit is not transferable and must be renewed annually. If a vessel permit holder surrenders his/her permit to the Administrator, Southwest Region, the permit will not be returned and a new permit will not be issued before the end of the calendar year. Vessel permits will be valid through December 31 of each year.

(2) *Operator permit*. The person in charge of and actually controlling fishing operations (hereinafter referred to as the operator) on a U.S. purse seine fishing vessel engaged in commercial fishing operations under a vessel permit must possess a valid operator permit issued under paragraph (b) of this section. Such permits are not transferable and must be renewed annually. To receive a permit, the operator must have satisfactorily completed all required training under paragraph (c)(5) of this section. The operator's permit is valid only when the permit holder is on a vessel with a valid vessel permit. Operator permits will be valid through December 31 of each year.

(3) *Possession and display*. A valid vessel permit issued pursuant to paragraph (b)(1) of this section must be on board the vessel while engaged in fishing operations, and a valid operator permit issued pursuant to paragraph (b)(2) of this section must be in the possession of the operator to whom it was issued. Permits must be shown upon request to NMFS enforcement agents,

U.S. Coast Guard officers, or designated agents of NMFS or the Inter-American Tropical Tuna Commission (IATTC) (including observers). A vessel owner or operator who is at sea on a fishing trip when his or her permit expires and to whom a permit for the next year has been issued, may take marine mammals under the terms of the new permit without having to display it on board the vessel until the vessel returns to port.

(4) *Application for vessel permit*. The owner or managing owner of a purse seine vessel may apply for a permit from the Administrator, Southwest Region, allowing at least 15 days for processing. All vessel permit applications must be faxed to (562) 980-4027. An owner or managing owner requesting to have a vessel in excess of 400 st (362.8 mt) carrying capacity for which a DML was requested categorized as active on the Vessel Register under § 300.22(b)(4)(i) of this title must submit to the Administrator, Southwest Region, the vessel permit application, payment of the observer placement fee under paragraph (b)(6)(iii) of this section and payment of the vessel permit application processing fee no later than September 15 of the year prior to the year for which the DML was requested. The owner or managing owner of a vessel in excess of 400 st (362.8 mt) carrying capacity not requesting a DML must submit the vessel permit application, payment of the observer placement fee, and payment of the vessel permit application processing fee no later than November 30 of the year prior to the year for which the vessel permit was requested. An application must contain:

(i) The name, official number, tonnage, carrying capacity in short or metric tons, maximum speed in knots, processing equipment, and type and quantity of gear, including an inventory of equipment required under paragraph (c)(3) of this section if the application is for purse seining involving the intentional taking of marine mammals, of the vessel that is to be covered under the permit;

(ii) A statement of whether the vessel will make sets involving the intentional taking of marine mammals;

(iii) The type and identification number(s) of Federal, state, and local commercial fishing licenses under which vessel operations are conducted, and the dates of expiration;

(iv) The name(s) of the operator(s) anticipated to be used; and

(v) The name and signature of the applicant, whether he/she is the owner or the managing owner, his/her address, telephone and fax numbers, and, if applicable, the name, address, telephone and fax numbers of the agent or organization acting on behalf of the vessel.

(5) *Application for operator permit.* An applicant for an operator permit must provide the following information to the Administrator, Southwest Region, allowing at least 45 days for processing:

(i) The name, address, telephone and fax numbers of the applicant;

(ii) The type and identification number(s) of any Federal, state, and local fishing licenses held by the applicant;

(iii) The name of the vessel(s) on which the applicant anticipates serving as an operator;

(iv) The date, location, and provider of training required under paragraph (c)(5) of this section for the operator permit; and

(v) The applicant's signature or the signature of the applicant's representative.

(6) *Fees*—(i) *Vessel permit application fees.* Payment of the permit application fee is required before NMFS will issue a permit. The Assistant Administrator may change the amount of this fee at any time if a different fee is determined in accordance with the NOAA Finance Handbook. The amount of the fee will be printed on the vessel permit application form provided by the Administrator, Southwest Region.

(ii) *Operator permit fee.* There is no fee for the operator permit. The Assistant Administrator may require a fee at any time if a fee is determined in accordance with the NOAA Finance Handbook and specified by the Administrator, Southwest Region, on the application form.

(iii) *Observer placement fee.* The observer placement fee supports the placement of observers on individual vessels, and maintenance of the observer program, as established by the

IATTC or other approved observer program.

(A) The owner or managing owner of a vessel for which a DML has been requested must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than September 15 of the year prior to the calendar year for which the DML was requested. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under §300.22(b)(4) of this title.

(B) The owner or managing owner of a vessel for which a DML has not been requested, but that is listed on the Vessel Register, as defined in §300.21 of this title, must submit payment of the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, no later than November 30 of the year prior to the calendar year in which the vessel will be listed on the Vessel Register. Payment of the observer placement fee must be consistent with the vessel's status, either active or inactive, on the Vessel Register in §300.22(b)(4) of this title.

(C) The owner or managing owner of a purse seine vessel that is licensed under the South Pacific Tuna Treaty must submit the observer placement fee, as established by the IATTC or other approved observer program, to the Administrator, Southwest Region, prior to obtaining an observer and entering the ETP to fish. Consistent with §300.22(b)(1)(i) of this title, this class of purse seine vessels is not required to be listed on the Vessel Register under §300.22(b)(4) of this title in order to purse seine for tuna in the ETP during a single fishing trip per calendar year of 90 days or less. Payment of the observer placement fee must be consistent with the fee for active status on the Vessel Register under §300.22(b)(4) of this title.

(D) The owner or managing owner of a purse seine vessel listed as inactive on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under §300.22(b)(4) of this title during the year, must pay the observer placement

fee associated with active status less the observer placement fee associated with inactive status that was already paid before NMFS will request the IATTC Secretariat change the status of the vessel from inactive to active.

(E) The owner or managing owner of a purse seine vessel not listed on the Vessel Register at the beginning of the calendar year and who requests to replace a vessel removed from active status on the Vessel Register under § 300.22(b)(4) of this title during the year, must pay the observer placement fee associated with active status before NMFS will request the IATTC Secretariat change the status of the vessel to active.

(F) Payments received after the dates specified in paragraphs (b) (6) (iii)(A) or (B) of this section will be subject to a 10 percent surcharge. The Administrator, Southwest Region, will forward all observer placement fees described in this section to the IATTC or to the applicable organization approved by the Administrator, Southwest Region.

(7) *Application approval.* The Administrator, Southwest Region, will determine the adequacy and completeness of an application and, upon determining that an application is adequate and complete, will approve that application and issue the appropriate permit, except for applicants having unpaid or overdue civil penalties, criminal fines, or other liabilities incurred in a legal proceeding.

(8) *Conditions applicable to all permits*—(i) *General conditions.* Failure to comply with the provisions of a permit or with these regulations may lead to suspension, revocation, modification, or denial of a permit. The permit holder, vessel, vessel owner, operator, or master may be subject, jointly or severally, to the penalties provided for under the MMPA. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(ii) *Observer placement.* By obtaining a permit, the permit holder consents to the placement of an observer on the vessel during every trip involving operations in the ETP and agrees to payment of the fees for observer placement. No observer will be assigned to a vessel unless that vessel owner has submitted payment of observer fees to the

Administrator, Southwest Region. The observers may be placed under an observer program of NMFS, IATTC, or another observer program approved by the Administrator, Southwest Region.

(iii) *Explosives.* The use of explosive devices is prohibited during all tuna purse seine operations that involve marine mammals.

(iv) *Reporting requirements.* (A) The vessel permit holder of each permitted vessel must notify the Administrator, Southwest Region or the IATTC contact designated by the Administrator, Southwest Region, at least 5 days in advance of the vessel's departure on a fishing trip to allow for observer placement on every trip.

(B) The vessel permit holder must notify the Administrator, Southwest Region, or the IATTC contact designated by the Administrator, Southwest Region, of any change of vessel operator at least 48 hours prior to departing on a fishing trip. In the case of a change in operator due to an emergency, notification must be made within 72 hours of the change.

(v) *Data release.* By using a permit, the permit holder authorizes the release to NMFS and the IATTC of all data collected by observers aboard purse seine vessels during fishing trips under the IATTC observer program or another international observer program approved by the Administrator, Southwest Region. The permit holder must furnish the international observer program with all release forms required to authorize the observer data to be provided to NMFS and the IATTC. Data obtained under such releases will be used for the same purposes as would data collected directly by observers placed by NMFS and will be subject to the same standards of confidentiality.

(9) *Mortality and serious injury reports.* The Administrator, Southwest Region, will provide to the public periodic status reports summarizing the estimated incidental dolphin mortality and serious injury by U.S. vessels of individual species and stocks.

(c) *Purse seining by vessels with Dolphin Mortality Limits (DMLs).* In addition to the terms and conditions set forth in paragraph (b) of this section, any permit for a vessel to which a DML

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has been assigned under paragraph (c)(9) of this section and any operator permit when used on such a vessel are subject to the following terms and conditions:

(1) A vessel may be used to chase and encircle schools of dolphins in the ETP only under the immediate direction of the holder of a valid operator's permit.

(2) *No retention of live marine mammals.* Except as otherwise authorized by a specific permit, live marine mammals incidentally taken must be immediately returned to the ocean without further injury. The operator of a purse seine vessel must take every precaution to refrain from causing or permitting incidental mortality or serious injury of marine mammals. Live marine mammals may not be brailed, sacked up, or hoisted onto the deck during ortza retrieval.

(3) *Gear and equipment required for valid permit.* A vessel possessing a vessel permit for purse seining involving the intentional taking of marine mammals may not engage in fishing operations involving the intentional deployment of the net on or encirclement of dolphins unless it is equipped with a dolphin safety panel in its purse seine, has the other required gear and equipment, and uses the required procedures.

(i) *Dolphin safety panel.* The dolphin safety panel must be a minimum of 180 fathoms in length (as measured before installation), except that the minimum length of the panel in nets deeper than 18 strips must be determined in a ratio of 10 fathoms in length for each strip of net depth. It must be installed so as to protect the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bowbunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point. The dolphin safety panel must consist of small mesh webbing not to exceed 1 1/4 inches (3.18 centimeters (cm)) stretch mesh extending downward from the corkline and, if present, the base of the dolphin apron to a minimum depth equivalent to two strips of 100 meshes of 4 1/4 inches (10.80 cm) stretch mesh webbing. In addition, at least a 20-fathom length of corkline

must be free from bunchlines at the apex of the backdown channel.

(ii) *Dolphin safety panel markers.* Each end of the dolphin safety panel and dolphin apron, if present, must be identified with an easily distinguishable marker.

(iii) *Dolphin safety panel hand holds.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron are located, hand hold openings must be secured so that they will not allow the insertion of a 1 3/8 inch (3.50 cm) diameter cylindrical-shaped object.

(iv) *Dolphin safety panel corkline hangings.* Throughout the length of the corkline under which the dolphin safety panel and dolphin apron if present, are located, corkline hangings must be inspected by the vessel operator following each trip. Hangings found to have loosened to the extent that a cylindrical-shaped object with a 1 3/8 inch (3.50 cm) diameter can be inserted between the cork and corkline hangings, must be tightened so as not to allow the insertion of a cylindrical-shaped object with a 1 3/8 inch (3.50 cm) diameter.

(v) *Speedboats.* A minimum of three speedboats in operating condition must be carried. All speedboats carried aboard purse seine vessels and in operating condition must be rigged with tow lines and towing bridles or towing posts. Speedboat hoisting bridles may not be substituted for towing bridles.

(vi) *Raft.* A raft suitable to be used as a dolphin observation-and-rescue platform must be carried.

(vii) *Facemask and snorkel, or viewbox.* At least two facemasks and snorkels or viewboxes must be carried.

(viii) *Lights.* The vessel must be equipped with lights capable of producing a minimum of 140,000 lumens of output for use in darkness to ensure sufficient light to observe that procedures for dolphin release are carried out and to monitor incidental dolphin mortality.

(4) *Vessel inspection*—(i) *Annual.* At least once during each calendar year, purse seine nets and other gear and equipment required under §216.24(c)(3) must be made available for inspection and for a trial set/net alignment by an authorized NMFS inspector or IATTC

staff as specified by the Administrator, Southwest Region, in order to obtain a vessel permit.

(ii) *Reinspection.* Purse seine nets and other gear and equipment required by these regulations must be made available for reinspection by an authorized NMFS inspector or IATTC staff as specified by the Administrator, Southwest Region. The vessel permit holder must notify the Administrator, Southwest Region, of any net modification at least 5 days prior to departure of the vessel in order to determine whether a reinspection or trial set/net alignment is required.

(iii) *Failure to pass inspection.* Upon failure to pass an inspection or reinspection, a vessel may not engage in purse seining involving the intentional taking of marine mammals until the deficiencies in gear or equipment are corrected as required by NMFS.

(5) *Operator permit holder training requirements.* An operator must maintain proficiency sufficient to perform the procedures required herein, and must attend and satisfactorily complete a formal training session approved by the Administrator, Southwest Region, in order to obtain his or her permit. At the training session, an attendee will be instructed on the relevant provisions and regulatory requirements of the MMPA and the IDCP, and the fishing gear and techniques that are required for reducing serious injury and mortality of dolphin incidental to purse seining for tuna. Operators who have received a written certificate of satisfactory completion of training and who possess a current or previous calendar year permit will not be required to attend additional formal training sessions unless there are substantial changes in the relevant provisions or implementing regulations of the MMPA or the IDCP, or in fishing gear and techniques. Additional training may be required for any operator who is found by the Administrator, Southwest Region, to lack proficiency in the required fishing procedures or familiarity with the relevant provisions or regulations of the MMPA or the IDCP.

(6) *Marine mammal release requirements.* All operators fishing pursuant to paragraph (c) of this section must use the following procedures during all sets

involving the incidental taking of marine mammals in association with the capture and landing of tuna.

(i) *Backdown procedure.* Backdown must be performed following a purse seine set in which dolphins are captured in the course of catching tuna, and must be continued until it is no longer possible to remove live dolphins from the net by this procedure. At least one crewmember must be deployed during backdown to aid in the release of dolphins. Thereafter, other release procedures required will be continued so that all live dolphins are released prior to the initiation of the sack-up procedure.

(ii) *Prohibited use of sharp or pointed instrument.* The use of a sharp or pointed instrument to remove any marine mammal from the net is prohibited.

(iii) *Sundown sets prohibited.* On every set encircling dolphin, the backdown procedure must be completed no later than one-half hour after sundown, except as provided here. For the purpose of this section, sundown is defined as the time at which the upper edge of the sun disappears below the horizon or, if the view of the sun is obscured, the local time of sunset calculated from tables developed by the U.S. Naval Observatory or other authoritative source approved by the Administrator, Southwest Region. A sundown set is a set in which the backdown procedure has not been completed and rolling the net to sack-up has not begun within one-half hour after sundown. Should a set extend beyond one-half hour after sundown, the operator must use the required marine mammal release procedures including the use of the high intensity lighting system. In the event a sundown set occurs where the seine skiff was let go 90 or more minutes before sundown, and an earnest effort to rescue dolphins is made, the International Review Panel of the IDCP may recommend to the United States that in the view of the International Review Panel, prosecution by the United States is not recommended. Any such recommendation will be considered by the United States in evaluating the appropriateness of prosecution in a particular circumstance.

(iv) *Dolphin safety panel.* During backdown, the dolphin safety panel

must be positioned so that it protects the perimeter of the backdown area. The perimeter of the backdown area is the length of corkline that begins at the outboard end of the last bow bunch pulled and continues to at least two-thirds the distance from the backdown channel apex to the stern tiedown point.

(7) *Experimental fishing operations.* The Administrator, Southwest Region, may authorize experimental fishing operations, consistent with the provisions of the IDCP, for the purpose of testing proposed improvements in fishing techniques and equipment that may reduce or eliminate dolphin mortality or serious injury, or do not require the encirclement of dolphins in the course of fishing operations. The Administrator, Southwest Region, may waive, as appropriate, any requirements of this section except DMLs and the obligation to carry an observer.

(i) A vessel permit holder may apply for an experimental fishing operation waiver by submitting the following information to the Administrator, Southwest Region, no less than 90 days before the date the proposed operation is intended to begin:

(A) The name(s) of the vessel(s) and the vessel permit holder(s) to participate;

(B) A statement of the specific vessel gear and equipment or procedural requirement to be exempted and why such an exemption is necessary to conduct the experiment;

(C) A description of how the proposed modification to the gear and equipment or procedures is expected to reduce incidental mortality or serious injury of marine mammals;

(D) A description of the applicability of this modification to other purse seine vessels;

(E) The planned design, time, duration, and general area of the experimental operation;

(F) The name(s) of the permitted operator(s) of the vessel(s) during the experiment;

(G) A statement of the qualifications of the individual or company doing the analysis of the research; and

(H) Signature of the permitted operator or of the operator's representative.

(ii) The Administrator, Southwest Region, will acknowledge receipt of the application and, upon determining that it is complete, will publish a notice in the FEDERAL REGISTER summarizing the application, making the full application available for inspection and inviting comments for a minimum period of 30 days from the date of publication.

(iii) The Administrator, Southwest Region, after considering the information submitted in the application identified in paragraph (c)(7)(i) of this section and the comments received, will either issue a waiver to conduct the experiment that includes restrictions or conditions deemed appropriate, or deny the application, giving the reasons for denial.

(iv) A waiver for an experimental fishing operation will be valid only for the vessels and operators named in the permit, for the time period and areas specified, for trips carrying an observer designated by the Administrator, Southwest Region, and when all the terms and conditions of the permit are met.

(v) The Administrator, Southwest Region, may suspend or revoke an experimental fishing waiver in accordance with 15 CFR part 904 if the terms and conditions of the waiver or the provisions of the regulations are not followed.

(8) *Operator permit holder performance requirements.* [Reserved]

(9) *Vessel permit holder dolphin mortality limits.* For purposes of this paragraph, the term "vessel permit holder" includes both the holder of a current vessel permit and also the holder of a vessel permit for the following year.

(i) By September 1 each year, a vessel permit holder desiring a DML for the following year must provide to the Administrator, Southwest Region, the name of the U.S. purse seine fishing vessel(s) of carrying capacity greater than 400 st (362.8 mt) that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the following year. NMF'S will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required by the IDCP, for assignment of a DML for the following

year under the provisions of Annex IV of the Agreement on the IDCP.

(ii) Each vessel permit holder that desires a DML only for the period between July 1 to December 31 must provide the Administrator, Southwest Region, by September 1 of the prior year, the name of the U.S. purse seine fishing vessel(s) of greater than 400 st (362.8 mt) carrying capacity that the owner intends to use to intentionally deploy purse seine fishing nets in the ETP to encircle dolphins in an effort to capture tuna during the period. NMFS will forward the list of purse seine vessels to the Director of the IATTC on or before October 1, or as otherwise required under the IDCP, for possible assignment of a DML for the 6-month period July 1 to December 31. Under the IDCP, the DML will be calculated by the IDCP from any unutilized pool of DMLs in accordance with the procedure described in Annex IV of the Agreement on the IDCP and will not exceed one-half of an unadjusted full-year DML as calculated by the IDCP.

(iii)(A) The Administrator, Southwest Region, will notify vessel owners of the DML assigned for each vessel for the following year, or the second half of the year, as applicable.

(B) The Administrator, Southwest Region, may adjust the DMLs in accordance with Annex IV of the Agreement on the IDCP. All adjustments of full-year DMLs will be made before January 1, and the Administrator, Southwest Region, will notify the Director of the IATTC of any adjustments prior to a vessel departing on a trip using its adjusted DML. The notification will be no later than February 1 in the case of adjustments to full-year DMLs, and no later than May 1 in the case of adjustments to DMLs for the second half of the year.

(C) In accordance with the requirements of Annex IV of the Agreement on the IDCP, the Administrator, Southwest Region, may adjust a vessel's DML if it will further scientific or technological advancement in the protection of marine mammals in the fishery or if the past performance of the vessel indicates that the protection or use of the yellowfin tuna stocks or marine mammals is best served by the adjustment, within the mandates of the

MMPA. Experimental fishing operation waivers or scientific research permits will be considered a basis for adjustments.

(iv)(A) A vessel assigned a full-year DML that does not make a set on dolphins by April 1 or that leaves the fishery will lose its DML for the remainder of the year, unless the failure to set on dolphins is due to force majeure or other extraordinary circumstances as determined by the International Review Panel.

(B) A vessel assigned a DML for the second half of the year will be considered to have lost its DML if the vessel has not made a set on dolphins before December 31, unless the failure to set on dolphins is due to force majeure or extraordinary circumstances as determined by the International Review Panel.

(C) Any vessel that loses its DML for 2 consecutive years will not be eligible to receive a DML for the following year.

(D) NMFS will determine, based on available information, whether a vessel has left the fishery.

(1) A vessel lost at sea, undergoing extensive repairs, operating in an ocean area other than the ETP, or for which other information indicates that vessel will no longer be conducting purse seine operations in the ETP for the remainder of the period covered by the DML will be determined to have left the fishery.

(2) NMFS will make all reasonable efforts to determine the intentions of the vessel owner. The owner of any vessel that has been preliminarily determined to have left the fishery will be provided notice of such preliminary determination and given the opportunity to provide information on whether the vessel has left the fishery prior to NMFS making a final determination under 15 CFR part 904 and notifying the IATTC.

(v) Any vessel that exceeds its assigned DML after any applicable adjustment under paragraph (c)(9)(iii) of this section will have its DML for the subsequent year reduced by 150 percent of the overage, unless another adjustment is determined by the International Review Panel, as mandated by the Agreement on the IDCP.

(vi) A vessel that is covered by a valid vessel permit and that does not normally fish for tuna in the ETP but desires to participate in the fishery on a limited basis may apply for a per-trip DML from the Administrator, Southwest Region, at any time, allowing at least 60 days for processing. The request must state the expected number of trips involving sets on dolphins and the anticipated dates of the trip or trips. The request will be forwarded to the Secretariat of the IATTC for processing in accordance with Annex IV of the Agreement on the IDCP. A per-trip DML will be assigned if one is made available in accordance with the terms of Annex IV of the Agreement on the IDCP. If a vessel assigned a per-trip DML does not set on dolphins during that trip, the vessel will be considered to have lost its DML unless this was a result of force majeure or other extraordinary circumstances as determined by the International Review Panel. After two consecutive losses of a DML, a vessel will not be eligible to receive a DML for the next fishing year.

(vii) Observers will make their records available to the vessel operator at any reasonable time, including after each set, in order for the operator to monitor the balance of the DML(s) remaining for use.

(viii) Vessel and operator permit holders must not deploy a purse seine net on or encircle any school of dolphins containing individuals of a particular stock of dolphins for the remainder of the calendar year:

(A) after the applicable per-stock per-year dolphin mortality limit for that stock of dolphins (or for that vessel, if so assigned) has been reached or exceeded; or

(B) after the time and date provided in actual notification or notification in the FEDERAL REGISTER by the Administrator, Southwest Region, based upon the best available evidence, stating when any applicable per-stock per-year dolphin mortality limit has been reached or exceeded, or is expected to be reached in the near future.

(ix) If individual dolphins belonging to a stock that is prohibited from being taken are not reasonably observable at the time the net skiff attached to the net is released from the vessel at the

start of a set, the fact that individuals of that stock are subsequently taken will not be cause for enforcement action provided that all procedures required by the applicable regulations have been followed.

(x) Vessel and operator permit holders must not intentionally deploy a purse seine net on or encircle dolphins intentionally:

(A) after a set in which the vessel's DML, as adjusted, has been reached or exceeded; or

(B) after the date and time provided in actual notification by letter, facsimile, radio, or electronic mail, or notice in the FEDERAL REGISTER by the Administrator, Southwest Region, based upon the best available evidence, that intentional sets on dolphins must cease because the total of the DMLs assigned to the U.S. fleet has been reached or exceeded, or is expected to be exceeded in the near future.

(d) *Purse seining by vessels without assigned DMLs.* In addition to the requirements of paragraph (b) of this section, a vessel permit used for a trip not involving an assigned DML and the operator's permit when used on such a vessel are subject to the following terms and conditions: a permit holder may take marine mammals provided that such taking is an accidental occurrence in the course of normal commercial fishing operations and the vessel does not intentionally deploy its net on, or to encircle, dolphins; marine mammals taken incidental to such commercial fishing operations must be immediately returned to the environment where captured without further injury, using release procedures such as hand rescue, or aborting the set at the earliest effective opportunity; and the use of one or more rafts and facemasks or viewboxes to aid in the rescue of dolphins is recommended.

(e) *Observers*—(1) The holder of a vessel permit must allow an observer duly authorized by the Administrator, Southwest Region, to accompany the vessel on all fishing trips in the ETP for the purpose of conducting research and observing operations, including collecting information that may be used in civil or criminal penalty proceedings, forfeiture actions, or permit sanctions. A vessel that fails to carry

an observer in accordance with these requirements may not engage in fishing operations.

(2) Research and observation duties will be carried out in such a manner as to minimize interference with commercial fishing operations. Observers must be provided access to vessel personnel and to dolphin safety gear and equipment, electronic navigation equipment, radar displays, high powered binoculars, and electronic communication equipment. The navigator must provide true vessel locations by latitude and longitude, accurate to the nearest minute, upon request by the observer. Observers must be provided with adequate space on the bridge or pilothouse for clerical work, as well as space on deck adequate for carrying out observer duties. No vessel owner, master, operator, or crew member of a permitted vessel may impair, or in any way interfere with, the research or observations being carried out. Masters must allow observers to use vessel communication equipment necessary to report information concerning the take of marine mammals and other observer collected data upon request of the observer.

(3) Any marine mammals killed during fishing operations that are accessible to crewmen and requested from the permit holder or master by the observer must be brought aboard the vessel and retained for biological processing, until released by the observer for return to the ocean. Whole marine mammals or marine mammal parts designated as biological specimens by the observer must be retained in cold storage aboard the vessel until retrieved by authorized personnel of NMFS or the IATTC when the vessel returns to port for unloading.

(4) It is unlawful for any person to forcibly assault, impede, intimidate, interfere with, or to influence or attempt to influence an observer, or to harass (including sexual harassment) an observer by conduct that has the purpose or effect of unreasonably interfering with the observer's work performance, or that creates an intimidating, hostile, or offensive environment. In determining whether conduct constitutes harassment, the totality of the circumstances, including the na-

ture of the conduct and the context in which it occurred, will be considered. The determination of the legality of a particular action will be made from the facts on a case-by-case basis.

(5)(i) All observers must be provided sleeping, toilet and eating accommodations at least equal to that provided to a full crew member. A mattress or futon on the floor or a cot is not acceptable in place of a regular bunk. Meal and other galley privileges must be the same for the observer as for other crew members.

(ii) Female observers on a vessel with an all-male crew must be accommodated either in a single-person cabin or, if reasonable privacy can be ensured by installing a curtain or other temporary divider, in a two-person cabin shared with a licensed officer of the vessel. If the cabin assigned to a female observer does not have its own toilet and shower facilities that can be provided for the exclusive use of the observer, then a schedule for time-sharing common facilities must be established before the placement meeting and approved by NMFS or other approved observer program and must be followed during the entire trip.

(iii) In the event there are one or more female crew members, the female observer must be provided a bunk in a cabin shared solely with female crew members, and provided toilet and shower facilities shared solely with these female crew members.

(f) *Importation, purchase, shipment, sale and transport.* (1)(i) It is illegal to import into the United States any fish, whether fresh, frozen, or otherwise prepared, if the fish have been caught with commercial fishing technology that results in the incidental kill or incidental serious injury of marine mammals in excess of that allowed under this part for U.S. fishermen, or as specified at paragraph (f)(6) of this section.

(ii) For purposes of this paragraph (f), and in applying the definition of an "intermediary nation," an import occurs when the fish or fish product is released from a nation's Customs' custody and enters into the commerce of the nation. For other purposes, "import" is defined in §216.3.

(2) *Imports requiring a Fisheries Certificate of Origin.* Shipments of tuna, tuna

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products, and certain other fish products identified by the U.S. Harmonized Tariff Schedule (HTS) numbers listed in paragraphs (f)(2)(i), (f)(2)(ii) and (f)(2)(iii) of this section may not be imported into the United States unless a properly completed Fisheries Certificate of Origin (FCO), NOAA Form 370, is filed with the U.S. Customs Service at the time of importation.

(i) *HTS numbers requiring a Fisheries Certificate of Origin, subject to yellowfin tuna embargo.* The following HTS numbers identify yellowfin tuna or yellowfin tuna products (other than fresh tuna) known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by an FCO. The scope of yellowfin tuna embargoes and procedures for attaining an affirmative finding are described under paragraphs (f)(6) and (f)(8) of this section, respectively.

(A) Frozen:	
0303.42.0020	Yellowfin tuna, whole, frozen
0303.42.0040	Yellowfin tuna, eviscerated, head on, frozen
0303.42.0060	Yellowfin tuna, other, frozen
(B) Airtight Containers: (products containing Yellowfin).	
1604.14.1010	Tuna, non-specific, in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each
1604.14.1090	Tuna, non-specific, in oil, in airtight containers, other
1604.14.2291	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota
1604.14.2299	Tuna, other than albacore, not in oil, in airtight containers, under quota
1604.14.3091	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota
1604.14.3099	Tuna, other than albacore, not in oil, in airtight containers, over quota
(C) Loins: (Yellowfin).	
1604.14.4000	Tuna, not in airtight containers, not in oil, weighing with their contents over 6.8 kg
1604.14.5000	Tuna, not in airtight containers, other
(D) Other: (products containing Yellowfin).	
0304.20.2066	Other fish, fillets, skinned, in blocks weighing over 4.5 kg, frozen
0304.20.6096	Other fish, fillets, frozen
1604.20.2500	Balls and cakes, not in oil, in airtight containers, other
1604.20.3000	Balls and cakes, other

(ii) *HTS numbers requiring a Fisheries Certificate of Origin, not subject to yellowfin tuna embargo.* The following HTS numbers identify tuna or tuna products, (other than fresh tuna or yellowfin tuna identified in paragraph (f)(2)(i) of this section, known to be imported into the United States. All shipments imported into the United States under these HTS numbers must be accompanied by an FCO.

(A) Frozen:	
0303.41.0000	Albacore or longfinned tunas, frozen
0303.43.0000	Skipjack, frozen
0303.44.0000	Bigeye, frozen
0303.45.0000	Bluefin, frozen
0303.46.0000	Bluefin Southern, frozen
0303.49.0100	Other tuna, frozen
(B) Airtight Containers: (Other than Yellowfin).	
1604.14.1010	Tuna, non-specific, in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each
1604.14.1090	Tuna, non-specific, in oil, in airtight containers, other
1604.14.2251	Tuna, albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota
1604.14.2259	Tuna, albacore, not in oil, in airtight containers, other, under quota
1604.14.2291	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, under quota
1604.14.2299	Tuna, other than albacore, not in oil, in airtight containers, other, under quota
1604.14.3051	Tuna, albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota
1604.14.3059	Tuna, albacore, not in oil, in airtight containers, other, over quota
1604.14.3091	Tuna, other than albacore, not in oil, in foil or other flexible airtight containers weighing with their contents not more than 6.8 kg each, over quota
1604.14.3099	Tuna, other than albacore, not in oil, in airtight containers, other, over quota
(C) Loins: (Other than Yellowfin).	
1604.14.4000	Tuna, not in airtight containers, in bulk or in immediate containers weighing with their contents over 6.8 kg, in oil
1604.14.5000	Tuna, not in airtight containers, other
(D) Other: (only if the product contains tuna).	
0304.20.2066	Other fish, fillets, skinned, in blocks weighing over 4.5 kg, frozen
0304.20.6096	Other fish, fillets, frozen
1604.20.2500	Balls and cakes, not in oil, in airtight containers, other
1604.20.3000	Balls and cakes, other

(iii) *Exports from driftnet nations only: HTS numbers requiring a Fisheries Certificate of Origin and official certification.* The following HTS numbers identify categories of fish and shellfish, in addition to those identified in paragraphs (f)(2)(i) and (f)(2)(ii) of this section, known to have been harvested using a large-scale driftnet and imported into the United States. Shipments exported from a large-scale driftnet nation, as identified under paragraph (f)(7) of this section, and imported into the United States under any of the HTS numbers listed in paragraph (f)(2) of this section must be accompanied by an FCO and the official statement described in paragraph (f)(4)(xiii) of this section.

(A) <i>Frozen:</i>	
0303.19.0012	Salmon, chinook, frozen
0303.19.0022	Salmon, chum, frozen
0303.19.0032	Salmon, pink, frozen
0303.19.0052	Salmon, coho, frozen
0303.19.0062	Salmon, Pacific, non-specific, frozen
0303.21.0000	Trout, frozen
0303.22.0000	Salmon, Atlantic and Danube, frozen
0303.29.0000	Salmonidae, other, frozen
0303.75.0010	Dogfish, frozen
0303.75.0090	Other sharks, frozen
0303.79.2041	Swordfish steaks, frozen
0303.79.2049	Swordfish, other, frozen
0303.79.4097	Fish, other, frozen
0304.20.2066	Fish, fillet, skinned, in blocks, frozen over 4.5 kg
0304.20.6008	Salmonidae, salmon fillet, frozen
0304.20.6092	Swordfish filets, frozen
0304.20.6096	Fish, fillet, other, frozen
0307.49.0010	Squid, other, fillet, frozen
(B) <i>Canned:</i>	
1604.11.2020	Salmon, pink, canned in oil, in airtight containers
1604.11.2030	Salmon, sockeye, canned in oil, in airtight containers
1604.11.2090	Salmon, other, canned in oil, in airtight containers
1604.11.4010	Salmon, chum, canned, not in oil
1604.11.4020	Salmon, pink, canned, not in oil
1604.11.4030	Salmon, sockeye, canned, not in oil
1604.11.4040	Salmon, other, canned, not in oil
1604.11.4050	Salmon, other, canned, not in oil
1604.19.2000	Fish, other, in airtight containers, not in oil
1604.19.3000	Fish, other, in airtight containers, in oil
1605.90.6050	Squid, loligo, prepared/preserved
1605.90.6055	Squid, other, prepared/preserved
(C) <i>Other:</i>	
0305.30.6080	Fish, other, fillet, dried/salted/brine
0305.49.4040	Fish, other, smoked
0305.59.2000	Shark fins, dried
0305.59.4000	Fish, other, dried
0305.69.4000	Salmon, other, salted (or in brine)
0305.69.5000	Fish, other, salted (or in brine), in immediate containers, not over 6.8 kg
0305.69.6000	Fish, other, salted (or in brine)
0307.49.0050	Squid, other, frozen/dried/salted/brine
0307.49.0060	Squid, other, & cuttle fish frozen/dried/salted/brine

(3) *Disposition of Fisheries Certificates of Origin.* The FCO described in paragraph (f)(4) of this section may be obtained from the Administrator, Southwest Region, or downloaded from the Internet at <http://swr.nmfs.noaa.gov/noaa370.htm>.

(i) A properly completed FCO and its attached certificates, if applicable, must accompany the required U.S. Customs entry documents that are filed at the time of import.

(ii) FCOs and associated certifications, if any, that accompany imported shipments of tuna must be submitted by the importer of record to the Tuna Tracking and Verification Program, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States. FCOs submitted via mail should be sent to Tuna Tracking and Verification Program, Southwest Region, P.O. Box 32469, Long Beach, CA 90832-2469. Copies of the documents may be submitted electronically using a secure file transfer protocol (FTP) site. Importers of record interested in submitting FCOs and associated certifications via FTP may contact a representative of the Tuna Tracking and Verification Program at the following email address: SWRTuna.Track@noaa.gov. The Tuna Tracking and Verification Program will facilitate secure transfer and protection of certifications by assigning a separate electronic folder for each importer. Access to the electronic folder will require a user identification and password. The Tuna Tracking and Verification Program will assign each importer a unique user identification and password. Safeguarding the confidentiality of the user identification and password is the responsibility of the importer to whom they are assigned. Copies of the documents may also be submitted via mail either on compact disc or as hard copies. All electronic submissions, whether via FTP or on compact disc, must be in either Adobe Portable Document Format (PDF) or as an image file embedded in a Microsoft Word, Microsoft PowerPoint, or Corel WordPerfect file.

(iii) FCOs that accompany imported shipments of tuna destined for further processing in the United States must

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be endorsed at each change in ownership and submitted to the Administrator, Southwest Region, by the last endorser when all required endorsements are completed.

(iv) Importers and exporters are required to retain their records, including FCOs, import or export documents, invoices, and bills of lading for 2 years, and such records must be made available within 30 days of a request by the Secretary or the Administrator, Southwest Region.

(4) *Contents of Fisheries Certificate of Origin.* An FCO, certified to be accurate by the exporter(s) of the accompanying shipment, must include the following information:

- (i) Customs entry identification;
- (ii) Date of entry;
- (iii) Exporter's full name and complete address;
- (iv) Importer's or consignee's full name and complete address;
- (v) Species description, product form, and HTS number;
- (vi) Total net weight of the shipment in kilograms;
- (vii) Ocean area where the fish were harvested (ETP, western Pacific Ocean, south Pacific Ocean, eastern Atlantic Ocean, western Atlantic Ocean, Caribbean Sea, Indian Ocean, or other);
- (viii) Type of fishing gear used to harvest the fish (purse seine, longline, baitboat, large-scale driftnet, gillnet, trawl, pole and line, or other);
- (ix) Country under whose laws the harvesting vessel operated based upon the flag of the vessel or, if a certified charter vessel, the country that accepted responsibility for the vessel's fishing operations;
- (x) Dates on which the fishing trip began and ended;
- (xi) The name of the harvesting vessel;
- (xii) Dolphin-safe condition of the shipment, described by checking the appropriate statement on the form and attaching additional certifications if required;
- (xiii) For shipments harvested by vessels of a nation known to use large-scale driftnets, as determined by the Secretary pursuant to paragraph (f)(7) of this section, the High Seas Driftnet Certification contained on the FCO must be dated and signed by a respon-

sible government official of the harvesting nation, certifying that the fish or fish products were harvested by a method other than large-scale driftnet; and

(xiv) Each additional importer, exporter, or processor who takes custody of the shipment must sign and date the form to certify that the form and attached documentation accurately describes the shipment of fish that they accompany.

(5) *Dolphin-safe label.* Tuna or tuna products sold in or exported from the United States that include on the label the term "dolphin-safe" or any other term or symbol that claims or suggests the tuna were harvested in a manner not injurious to dolphins are subject to the requirements of subpart H of this part (§216.90 *et seq.*).

(6) *Scope of embargoes—(i) ETP yellowfin tuna embargo.* Yellowfin tuna or products of yellowfin tuna harvested using a purse seine in the ETP identified by an HTS number listed in paragraph (f)(2)(i) of this section may not be imported into the United States if such tuna or tuna products were:

(A) Harvested on or after March 3, 1999, the effective date of section 4 of the IDCPA, and harvested by, or exported from, a nation that the Assistant Administrator has determined has jurisdiction over purse seine vessels of greater than 400 st (362.8 mt) carrying capacity harvesting tuna in the ETP, unless the Assistant Administrator has made an affirmative finding required for importation for that nation under paragraph (f)(8) of this section;

(B) Exported from an intermediary nation, as defined in Section 3 of the MMPA, and a ban is currently in force prohibiting the importation from that nation under paragraph (f)(9) of this section; or

(C) Harvested before March 3, 1999, the effective date of Section 4 of the IDCPA, and would have been banned from importation under Section 101(a)(2) of the MMPA at the time of harvest.

(ii) *Driftnet embargo.* A shipment containing fish or fish products identified by an HTS number listed in paragraph (f)(2) of this section may not be imported into the United States if it is harvested by a large-scale driftnet, or

if it is exported from or harvested on the high seas by any nation determined by the Assistant Administrator to be engaged in large-scale driftnet fishing, unless a government official of the large-scale driftnet nation completes, signs and dates the High Seas Driftnet section of the FCO certifying that the fish or fish products were harvested by a method other than large-scale driftnet.

(iii) *Pelly certification.* After 6 months of an embargo being in place against a nation under this section, the Secretary will certify that nation under section 8(a) of the Fishermen's Protective Act (22 U.S.C. 1978(a)). When such an embargo is lifted, the Secretary will terminate the certification under Section 8(d) of that Act (22 U.S.C. 1978(d)).

(iv) *Coordination.* The Assistant Administrator will promptly advise the Department of State and the Department of Homeland Security of embargo decisions, actions, and finding determinations.

(7) *Large-scale driftnet nation: determination.* Based upon the best information available, the Assistant Administrator will determine which nations have registered vessels that engage in fishing using large-scale driftnets. Such determinations will be published in the FEDERAL REGISTER. A responsible government official of any such nation may certify to the Assistant Administrator that none of the nation's vessels use large-scale driftnets. Upon receipt of the certification, the Assistant Administrator may find, and publish such finding in the FEDERAL REGISTER, that none of that nation's vessels engage in fishing with large-scale driftnets.

(8) *Affirmative finding procedure for nations harvesting yellowfin tuna using a purse seine in the ETP.* (i) The Assistant Administrator will determine, on an annual basis, whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation or by the IDCP and the IATTC, and will publish the finding in the FEDERAL REGISTER. A finding will remain valid for 1 year or for such other period as the Assistant Administrator may determine. An affirmative finding will be terminated if the Assistant Administrator

determines that the requirements of this paragraph are no longer being met. Every 5 years, the government of the harvesting nation must submit such documentary evidence directly to the Assistant Administrator and request an affirmative finding. Documentary evidence must be submitted by the harvesting nation for the first affirmative finding application. The Assistant Administrator may require the submission of supporting documentation or other verification of statements made in connection with requests to allow importations. An affirmative finding applies to yellowfin tuna and yellowfin tuna products that were harvested by vessels of the nation after March 3, 1999. To make an affirmative finding, the Assistant Administrator must find that:

(A) The harvesting nation participates in the IDCP and is either a member of the IATTC or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3, of the Convention establishing the IATTC, to become a member of that organization;

(B) The nation is meeting its obligations under the IDCP and its obligations of membership in the IATTC, including all financial obligations;

(C)(1) The annual total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels for the year preceding the year in which the finding would start; or

(2)(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the total dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the mortality limits assigned by the IDCP for that nation's purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate mortality of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association

with dolphins for the remainder of the calendar year; and

(D)(1) In any years in which the parties agree to a global allocation system for per-stock per-year individual stock quotas, the nation responded to the notification from the IATTC that an individual stock quota had been reached by prohibiting any additional sets on the stock for which the quota had been reached;

(2) If a per-stock per-year quota is allocated to each nation, the annual per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) did not exceed the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels (if any) for the year preceding the year in which the finding would start; or

(3)(i) Because of extraordinary circumstances beyond the control of the nation and the vessel captains, the per-stock per-year dolphin mortality of the nation's purse seine fleet (including certified charter vessels operating under its jurisdiction) exceeded the aggregated total of the per-stock per-year limits assigned by the IDCP for that nation's purse seine vessels; and

(ii) Immediately after the national authorities discovered the aggregate per-stock mortality limits of its fleet had been exceeded, the nation required all its vessels to cease fishing for tuna in association with the stocks whose limits had been exceeded, for the remainder of the calendar year.

(iii) *Documentary Evidence and Compliance with the IDCP*—(A) *Documentary Evidence*. The Assistant Administrator will make an affirmative finding under paragraph (f)(8)(i) of this section only if the government of the harvesting nation provides directly to the Assistant Administrator, or authorizes the IATTC to release to the Assistant Administrator, complete, accurate, and timely information that enables the Assistant Administrator to determine whether the harvesting nation is meeting the obligations of the IDCP, and whether ETP-harvested tuna imported from such nation comports with the tracking and verification regulations of subpart H of this part.

(B) *Revocation*. After considering the information provided under paragraph (f)(8)(ii)(A) of this section, each party's financial obligations to the IATTC, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations that diminish the effectiveness of the IDCP, the Assistant Administrator, in consultation with the Secretary of State, will revoke an affirmative finding issued to a nation that is not meeting the obligations of the IDCP.

(iv) A harvesting nation may apply for an affirmative finding at any time by providing to the Assistant Administrator the information and authorizations required in paragraphs (f)(8)(i) and (f)(8)(ii) of this section, allowing at least 60 days from the submission of complete information to NMFS for processing.

(v) The Assistant Administrator will make or renew an affirmative finding for the period from April 1 through March 31 of the following year, or portion thereof, if the harvesting nation has provided all the information and authorizations required by paragraphs (f)(8)(i) and (f)(8)(ii) of this section, and has met the requirements of paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(vi) *Reconsideration of finding*. The Assistant Administrator may reconsider a finding upon a request from, and the submission of additional information by, the harvesting nation, if the information indicates that the nation has met the requirements under paragraphs (f)(8)(i) and (f)(8)(ii) of this section.

(9) *Intermediary nation*. Except as authorized under this paragraph, no yellowfin tuna or yellowfin tuna products harvested by purse seine in the ETP classified under one of the HTS numbers listed in paragraph (f)(2)(i) of this section may be imported into the United States from any intermediary nation.

(i) An "intermediary nation" is a nation that exports yellowfin tuna or yellowfin tuna products to the United States and that imports yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation

into the United States pursuant to Section 101(a)(2)(B) of the MMPA.

(ii) Shipments of yellowfin tuna that pass through any nation (e.g. on a 'through Bill of Lading') and are not entered for consumption in that nation are not considered to be imports to that nation and thus, would not cause that nation to be considered an intermediary nation under the MMPA.

(iii) The Assistant Administrator will publish in the FEDERAL REGISTER a notice announcing when NMFS has determined, based on the best information available, that a nation is an "intermediary nation." After the effective date of that notice, the import restrictions of this paragraph shall apply.

(iv) *Changing the status of intermediary nation determinations.* Imports from an intermediary nation of yellowfin tuna and yellowfin tuna products classified under any of the HTS numbers in paragraph (f)(2)(i) of this section may be imported into the United States only if the Assistant Administrator determines, and publishes a notice of such determination in the FEDERAL REGISTER, that the intermediary nation has provided certification and reasonable proof that it has not imported in the preceding 6 months yellowfin tuna or yellowfin tuna products that are subject to a ban on direct importation into the United States under Section 101(a)(2)(B) of the MMPA. At that time, the nation shall no longer be considered an "intermediary nation" and these import restrictions shall no longer apply.

(v) The Assistant Administrator will review decisions under this paragraph upon the request of an intermediary nation. Such requests must be accompanied by specific and detailed supporting information or documentation indicating that a review or reconsideration is warranted. For purposes of this paragraph, the term "certification and reasonable proof" means the submission to the Assistant Administrator by a responsible government official from the nation of a document reflecting the nation's customs records for the preceding 6 months, together with a certification attesting that the document is accurate.

(10) *Fish refused entry.* If fish is denied entry under paragraph (f)(2) of this sec-

tion, the Port Director of Customs shall refuse to release the fish for entry into the United States.

(11) *Disposition of fish refused entry into the United States.* Fish that is denied entry under paragraph (f)(2) of this section and that is not exported under Customs supervision within 90 days shall be disposed of under Customs laws and regulations at the importer's expense. Provided, however, that any disposition shall not result in an introduction into the United States of fish caught in violation of the MMPA.

(12) *Market Prohibitions.* (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products unless the tuna products are either:

(A) Dolphin-safe under subpart H of this part; or

(B) Harvested in compliance with the IDCP by vessels under the jurisdiction of a nation that is a member of the IATTC or has initiated, and within 6 months thereafter completes, all steps required by an applicant nation to become a member of the IATTC.

(ii) It is unlawful for any exporter, transshipper, importer, processor, or wholesaler/distributor to possess, sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna products bearing a label or mark that refers to dolphins, porpoises, or marine mammals unless the label or mark complies with the requirements of 16 U.S.C. 1385(d).

(g) *Penalties.* Any person or vessel subject to the jurisdiction of the United States will be subject to the penalties provided for under the MMPA for the conduct of fishing operations in violation of these regulations. Penalties for violating these regulations may include, but are not limited to, civil monetary fines, permit suspension or revocation, and reductions in current and future DMLs. Recommended sanctions are identified in the IDCPA/DPCIA Tuna/Dolphin Civil Administrative Penalty Schedule. Procedures for the imposition of penalties under the MMPA are found at 15 CFR part 904.

[69 FR 55297, Sept. 13, 2004, as amended at 70 FR 19008, Apr. 12, 2005]

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§216.25 Exempted marine mammals and marine mammal products.

(a) The provisions of the MMPA and these regulations shall not apply:

(1) To any marine mammal taken before December 21, 1972¹, or

(2) To any marine mammal product if the marine mammal portion of such product consists solely of a marine mammal taken before such date.

(b) The prohibitions contained in §216.12(c) (3) and (4) shall not apply to marine mammals or marine mammal products imported into the United States before the date on which a notice is published in the FEDERAL REGISTER with respect to the designation of the species or stock concerned as depleted or endangered.

(c) Section 216.12(b) shall not apply to articles imported into the United States before the effective date of the foreign law making the taking or sale, as the case may be, of such marine mammals or marine mammal products unlawful.

[39 FR 1852, Jan. 15, 1974, as amended at 56 FR 43888, Sept. 5, 1991; 59 FR 50376, Oct. 3, 1994]

§216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within¹/₄ of a mile of the ocean. The term *ocean* includes bays and estuaries.

(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a living marine mammal in the wild may be collected or imported for bona fide scientific research and enhancement, provided that collection does not involve the taking of a living marine mammal in the wild.

(c) Any marine mammal part collected under paragraph (a) of this section or any marine mammal part collected and imported under paragraph

¹In the context of captive maintenance of marine mammals, the only marine mammals exempted under this section are those that were actually captured or otherwise in captivity before December 21, 1972.

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(b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with §216.22(c). In registering a marine mammal part collected or imported under paragraph (b) of this section, the person who collected or imported the part must also state the scientific research or enhancement purpose for which the part was collected or imported.

(d) No person may purchase, sell or trade for commercial purposes any marine mammal part collected or imported under this section.

(e) The export of parts collected without prior authorization under paragraph (b) of this section may occur if consistent with the provisions at §216.37(d) under subpart D.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 61 FR 21933, May 10, 1996]

§216.27 Release, non-releasability, and disposition under special exception permits for rehabilitated marine mammals.

(a) *Release requirements.* (1) Any marine mammal held for rehabilitation must be released within six months of capture or import unless the attending veterinarian determines that:

(i) The marine mammal might adversely affect marine mammals in the wild;

(ii) Release of the marine mammal to the wild will not likely be successful given the physical condition and behavior of the marine mammal; or

(iii) More time is needed to determine whether the release of the marine mammal to the wild will likely be successful. Releasability must be reevaluated at intervals of no less than six months until 24 months from capture or import, at which time there will be a rebuttable presumption that release into the wild is not feasible.

(2) The custodian of the rehabilitated marine mammal shall provide written notification prior to any release into the wild.

(i) Notification shall be provided to:

(A) The NMFS Regional Director at least 15 days in advance of releasing any beached or stranded marine mammal, unless advance notice is waived in writing by the Regional Director; or

(B) The Office Director at least 30 days in advance of releasing any imported marine mammal.

(ii) Notification shall include the following:

(A) A description of the marine mammal, including its physical condition and estimated age;

(B) The date and location of release; and

(C) The method and duration of transport prior to release.

(3) The Regional Director, or the Office Director as appropriate, may:

(i) Require additional information prior to any release;

(ii) Change the date or location of release, or the method or duration of transport prior to release;

(iii) Impose additional conditions to improve the likelihood of success or to monitor the success of the release; or

(iv) Require other disposition of the marine mammal.

(4) All marine mammals must be released near wild populations of the same species, and stock if known, unless a waiver is granted by the Regional Director or the Office Director.

(5) All marine mammals released must be tagged or marked in a manner acceptable to the Regional Director or the Office Director. The tag number or description of the marking must be reported to the Regional Director or Office Director following release.

(b) *Non-releasability and postponed determinations.* (1) The attending veterinarian shall provide the Regional Director or Office Director with a written report setting forth the basis of any determination under paragraphs (a)(1)(i) through (iii) of this section.

(2) Upon receipt of a report under paragraph (b)(1) of this section, the Regional Director or Office Director, in their sole discretion, may:

(i) Order the release of the marine mammal;

(ii) Order continued rehabilitation for an additional 6 months; or

(iii) Order other disposition as authorized.

(3) No later than 30 days after a marine mammal is determined unreleasable in accordance with paragraphs (a)(1)(i) through (iii) of this section, the person with authorized custody must:

(i) Request authorization to retain or transfer custody of the marine mammal in accordance with paragraph (c) of this section, or;

(ii) Humanely euthanize the marine mammal or arrange any other disposition of the marine mammal authorized by the Regional Director or Office Director.

(4) Notwithstanding any of the provisions of this section, the Office Director may require use of a rehabilitated marine mammal for any activity authorized under subpart D in lieu of animals taken from the wild.

(5) Any rehabilitated beached or stranded marine mammal placed on public display following a non-releasability determination under paragraph (a)(1) of this section and pending disposition under paragraph (c) of this section, or any marine mammal imported for medical treatment otherwise unavailable and placed on public display pending disposition after such medical treatment is concluded, must be held in captive maintenance consistent with all requirements for public display.

(c) *Disposition for a special exception purpose.* (1) Upon receipt of an authorization request made under paragraph (b)(3)(i) of this section, or release notification under (a)(2), the Office Director may authorize the retention or transfer of custody of the marine mammal for a special exception purpose authorized under subpart D.

(2) The Office Director will first consider requests from a person authorized to hold the marine mammal for rehabilitation. The Office Director may authorize such person to retain or transfer custody of the marine mammal for scientific research, enhancement, or public display purposes.

(3) The Office Director may authorize retention or transfer of custody of the marine mammal only if:

(i) Documentation has been submitted to the Office Director that the person retaining the subject animal or the person receiving custody of the subject animal by transfer, hereinafter referred to as the recipient, complies with public display requirements of 16 U.S.C. 1374(c)(2)(A) or, for purposes of scientific research and enhancement,

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holds an applicable permit, or an application for such a special exception permit under § 216.33 or a request for a major amendment under § 216.39 has been submitted to the Office Director and has been found complete;

(ii) The recipient agrees to hold the marine mammal in conformance with all applicable requirements and standards; and

(iii) The recipient acknowledges that the marine mammal is subject to seizure by the Office Director:

(A) If, at any time pending issuance of the major amendment or permit, the Office Director determines that seizure is necessary in the interest of the health or welfare of the marine mammal;

(B) If the major amendment or permit is denied; or

(C) If the recipient is issued a notice of violation and assessment, or is subject to permit sanctions, in accordance with 15 CFR part 904.

(4) There shall be no remuneration associated with any transfer, provided that, the transferee may reimburse the transferor for any and all costs associated with the rehabilitation and transport of the marine mammal.

(5) Marine mammals undergoing rehabilitation or pending disposition under this section shall not be subject to public display, unless such activities are specifically authorized by the Regional Director or the Office Director, and conducted consistent with the requirements applicable to public display. Such marine mammals shall not be trained for performance or be included in any aspect of a program involving interaction with the public; and

(6) Marine mammals undergoing rehabilitation shall not be subject to intrusive research, unless such activities are specifically authorized by the Office Director in consultation with the Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals, and are conducted pursuant to a scientific research permit.

(d) Reporting. In addition to the report required under § 216.22(b), the person authorized to hold marine mammals for rehabilitation must submit reports to the Regional Director or Office

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Director regarding release or other disposition. These reports must be provided in the form and frequency specified by the Regional Director or Office Director.

[61 FR 21933, May 10, 1996]

Subpart D—Special Exceptions

§ 216.30 [Reserved]

§ 216.31 Definitions.

For the purpose of this subpart, the definitions set forth in 50 CFR part 217 shall apply to all threatened and endangered marine mammals, unless a more restrictive definition exists under the MMPA or part 216.

[61 FR 21935, May 10, 1996]

§ 216.32 Scope.

The regulations of this subpart apply to:

(a) All marine mammals and marine mammal parts taken or born in captivity after December 20, 1972; and

(b) All marine mammals and marine mammal parts that are listed as threatened or endangered under the ESA.

[61 FR 21935, May 10, 1996]

§ 216.33 Permit application submission, review, and decision procedures.

(a) *Application submission.* Persons seeking a special exemption permit under this subpart must submit an application to the Office Director. The application must be signed by the applicant, and provide in a properly formatted manner all information necessary to process the application. Written instructions addressing information requirements and formatting may be obtained from the Office Director upon request.

(b) *Applications to export living marine mammals.* For applicants seeking a special exception permit to export living marine mammals, the application must:

(1) Be submitted through the Convention on International Trade in Endangered Fauna and Flora management authority of the foreign government or, if different, the appropriate agency or agencies of the foreign government

that exercises oversight over marine mammals.

(2) Include a certification from the foreign government that:

(i) The information set forth in the application is accurate;

(ii) The laws and regulations of the foreign government involved allow enforcement of the terms and conditions of the permit, and that the foreign government will enforce all terms and conditions; and

(iii) The foreign government involved will afford comity to any permit amendment, modification, suspension or revocation decision.

(c) *Initial review.* (1) NMFS will notify the applicant of receipt of the application.

(2) During the initial review, the Office Director will determine:

(i) Whether the application is complete.

(ii) Whether the proposed activity is for purposes authorized under this subpart.

(iii) If the proposed activity is for enhancement purposes, whether the species or stock identified in the application is in need of enhancement for its survival or recovery and whether the proposed activity will likely succeed in its objectives.

(iv) Whether the activities proposed are to be conducted consistent with the permit restrictions and permit specific conditions as described in § 216.35 and § 216.36(a).

(v) Whether sufficient information is included regarding the environmental impact of the proposed activity to enable the Office Director:

(A) To make an initial determination under the National Environmental Policy Act (NEPA) as to whether the proposed activity is categorically excluded from preparation of further environmental documentation, or whether the preparation of an environmental assessment (EA) or environmental impact statement (EIS) is appropriate or necessary; and

(B) To prepare an EA or EIS if an initial determination is made by the Office Director that the activity proposed is not categorically excluded from such requirements.

(3) The Office Director may consult with the Marine Mammal Commission

(Commission) and its Committee of Scientific Advisors on Marine Mammals (Committee) in making these initial, and any subsequent, determinations.

(4) Incomplete applications will be returned with explanation. If the applicant fails to resubmit a complete application or correct the identified deficiencies within 60 days, the application will be deemed withdrawn. Applications that propose activities inconsistent with this subpart will be returned with explanation, and will not be considered further.

(d) *Notice of receipt and application review.* (1) Upon receipt of a valid, complete application, and the preparation of any NEPA documentation that has been determined initially to be required, the Office Director will publish a notice of receipt in the FEDERAL REGISTER. The notice will:

(i) Summarize the application, including:

(A) The purpose of the request;

(B) The species and number of marine mammals;

(C) The type and manner of special exception activity proposed;

(D) The location(s) in which the marine mammals will be taken, from which they will be imported, or to which they will be exported; and

(E) The requested period of the permit.

(ii) List where the application is available for review.

(iii) Invite interested parties to submit written comments concerning the application within 30 days of the date of the notice.

(iv) Include a NEPA statement that an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an EA or EIS, that an EA was prepared resulting in a finding of no significant impact, or that a final EIS has been prepared and is available for review.

(2) The Office Director will forward a copy of the complete application to the Commission for comment. If no comments are received within 45 days (or such longer time as the Office Director may establish) the Office Director will consider the Commission to have no objection to issuing a permit.

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(3) The Office Director may consult with any other person, institution, or agency concerning the application.

(4) Within 30 days of publication of the notice of receipt in the FEDERAL REGISTER, any interested party may submit written comments or may request a public hearing on the application.

(5) If the Office Director deems it advisable, the Office Director may hold a public hearing within 60 days of publication of the notice of receipt in the FEDERAL REGISTER. Notice of the date, time, and place of the public hearing will be published in the FEDERAL REGISTER not less than 15 days in advance of the public hearing. Any interested person may appear in person or through representatives and may submit any relevant material, data, views, or comments. A summary record of the hearing will be kept.

(6) The Office Director may extend the period during which any interested party may submit written comments. Notice of the extension must be published in the FEDERAL REGISTER within 60 days of publication of the notice of receipt in the FEDERAL REGISTER.

(7) If, after publishing a notice of receipt, the Office Director determines on the basis of new information that an EA or EIS must be prepared, the Office Director must deny the permit unless an EA is prepared with a finding of no significant impact. If a permit is denied under these circumstances the application may be resubmitted with information sufficient to prepare an EA or EIS, and will be processed as a new application.

(e) *Issuance or denial procedures.* (1) Within 30 days of the close of the public hearing or, if no public hearing is held, within 30 days of the close of the public comment period, the Office Director will issue or deny a special exception permit.

(2) The decision to issue or deny a permit will be based upon:

(i) All relevant issuance criteria set forth at §216.34;

(ii) All purpose-specific issuance criteria as appropriate set forth at §216.41, §216.42, and §216.43;

(iii) All comments received or views solicited on the permit application; and

(iv) Any other information or data that the Office Director deems relevant.

(3) If the permit is issued, upon receipt, the holder must date and sign the permit, and return a copy of the original to the Office Director. The permit shall be effective upon the permit holder's signing of the permit. In signing the permit, the holder:

(i) Agrees to abide by all terms and conditions set forth in the permit, and all restrictions and relevant regulations under this subpart; and

(ii) Acknowledges that the authority to conduct certain activities specified in the permit is conditional and subject to authorization by the Office Director.

(4) Notice of the decision of the Office Director shall be published in the FEDERAL REGISTER within 10 days after the date of permit issuance or denial and shall indicate where copies of the permit, if issued, may be reviewed or obtained. If the permit issued involves marine mammals listed as endangered or threatened under the ESA, the notice shall include a finding by the Office Director that the permit:

(i) Was applied for in good faith;

(ii) If exercised, will not operate to the disadvantage of such endangered or threatened species; and

(iii) Is consistent with the purposes and policy set forth in section 2 of the ESA.

(5) If the permit is denied, the Office Director shall provide the applicant with an explanation for the denial.

(6) Under the MMPA, the Office Director may issue a permit for scientific research before the end of the public comment period if delaying issuance could result in injury to a species, stock, or individual, or in loss of unique research opportunities. The Office Director also may waive the 30-day comment period required under the ESA in an emergency situation where the health or life of an endangered or threatened marine mammal is threatened and no reasonable alternative is available. If a permit is issued under these circumstances, notice of such issuance before the end of the comment period shall be published in the FEDERAL REGISTER within 10 days of issuance.

(7) The applicant or any party opposed to a permit may seek judicial review of the terms and conditions of such permit or of a decision to deny such permit. Review may be obtained by filing a petition for review with the appropriate U.S. District Court as provided for by law.

[61 FR 21935, May 10, 1996]

§ 216.34 Issuance criteria.

(a) For the Office Director to issue any permit under this subpart, the applicant must demonstrate that:

(1) The proposed activity is humane and does not present any unnecessary risks to the health and welfare of marine mammals;

(2) The proposed activity is consistent with all restrictions set forth at § 216.35 and any purpose-specific restrictions as appropriate set forth at § 216.41, § 216.42, and § 216.43;

(3) The proposed activity, if it involves endangered or threatened marine mammals, will be conducted consistent with the purposes and policies set forth in section 2 of the ESA;

(4) The proposed activity by itself or in combination with other activities, will not likely have a significant adverse impact on the species or stock;

(5) Whether the applicant's expertise, facilities, and resources are adequate to accomplish successfully the objectives and activities stated in the application;

(6) If a live animal will be held captive or transported, the applicant's qualifications, facilities, and resources are adequate for the proper care and maintenance of the marine mammal; and

(7) Any requested import or export will not likely result in the taking of marine mammals or marine mammal parts beyond those authorized by the permit.

(b) The opinions or views of scientists or other persons or organizations knowledgeable of the marine mammals that are the subject of the application or of other matters germane to the application will be considered.

[61 FR 21936, May 10, 1996]

§ 216.35 Permit restrictions.

The following restrictions shall apply to all permits issued under this subpart:

(a) The taking, importation, export, or other permitted activity involving marine mammals and marine mammal parts shall comply with the regulations of this subpart.

(b) The maximum period of any special exception permit issued, or any major amendment granted, is five years from the effective date of the permit or major amendment. In accordance with the provisions of § 216.39, the period of a permit may be extended by a minor amendment up to 12 months beyond that established in the original permit.

(c) Except as provided for in § 216.41(c)(1)(v), marine mammals or marine mammal parts imported under the authority of a permit must be taken or imported in a humane manner, and in compliance with the Acts and any applicable foreign law. Importation of marine mammals and marine mammal parts is subject to the provisions of 50 CFR part 14.

(d) The permit holder shall not take from the wild any marine mammal which at the time of taking is either unweaned or less than eight months old, or is a part of a mother-calf/pup pair, unless such take is specifically authorized in the conditions of the special exception permit. Additionally, the permit holder shall not import any marine mammal that is pregnant or lactating at the time of taking or import, or is unweaned or less than eight months old unless such import is specifically authorized in the conditions of the special exception permit.

(e) Captive marine mammals shall not be released into the wild unless specifically authorized by the Office Director under a scientific research or enhancement permit.

(f) The permit holder is responsible for all activities of any individual who is operating under the authority of the permit;

(g) Individuals conducting activities authorized under the permit must possess qualifications commensurate with their duties and responsibilities, or must be under the direct supervision of a person with such qualifications;

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(h) Persons who require state or Federal licenses to conduct activities authorized under the permit must be duly licensed when undertaking such activities;

(i) Special exception permits are not transferable or assignable to any other person, and a permit holder may not require any direct or indirect compensation from another person in return for requesting authorization for such person to conduct the taking, import, or export activities authorized under the subject permit;

(j) The permit holder or designated agent shall possess a copy of the permit when engaged in a permitted activity, when the marine mammal is in transit incidental to such activity, and whenever marine mammals or marine mammal parts are in the possession of the permit holder or agent. A copy of the permit shall be affixed to any container, package, enclosure, or other means of containment, in which the marine mammals or marine mammal parts are placed for purposes of transit, supervision, or care. For marine mammals held captive and marine mammal parts in storage, a copy of the permit shall be kept on file in the holding or storage facility.

[61 FR 21936, May 10, 1996]

§216.36 Permit conditions.

(a) *Specific conditions.* (1) Permits issued under this subpart shall contain specific terms and conditions deemed appropriate by the Office Director, including, but not limited to:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which marine mammals may be taken according to type of take;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, or to which they may be exported, as applicable, and, for endangered or threatened marine mammal species to be imported or exported, the port of entry or export;

(iv) The period during which the permit is valid.

(2) [Reserved]

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(b) *Other conditions.* In addition to the specific conditions imposed pursuant to paragraph (a) of this section, the Office Director shall specify any other permit conditions deemed appropriate.

[61 FR 21937, May 10, 1996]

§216.37 Marine mammal parts.

With respect to marine mammal parts acquired by take or import authorized under a permit issued under this subpart:

(a) Marine mammal parts are transferrable if:

(1) The person transferring the part receives no remuneration of any kind for the marine mammal part;

(2) The person receiving the marine mammal part is:

(i) An employee of NMFS, the U.S. Fish and Wildlife Service, or any other governmental agency with conservation and management responsibilities, who receives the part in the course of their official duties;

(ii) A holder of a special exception permit which authorizes the take, import, or other activity involving the possession of a marine mammal part of the same species as the subject part; or

(iii) In the case of marine mammal parts from a species that is not depleted, endangered or threatened, a person who is authorized under section 112(c) of the MMPA and subpart C of this part to take or import marine mammals or marine mammal parts;

(iv) Any other person specifically authorized by the Regional Director, consistent with the requirements of paragraphs (a)(1) and (a)(3) through (6) of this section.

(3) The marine mammal part is transferred for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that, for transfers for educational purposes, the recipient is a museum, educational institution or equivalent that will ensure that the part is available to the public as part of an educational program;

(4) A unique number assigned by the permit holder is marked on or affixed to the marine mammal part or container;

(5) The person receiving the marine mammal part agrees that, as a condition of receipt, subsequent transfers may only occur subject to the provisions of paragraph (a) of this section; and

(6) Within 30 days after the transfer, the person transferring the marine mammal part notifies the Regional Director of the transfer, including a description of the part, the person to whom the part was transferred, the purpose of the transfer, certification that the recipient has agreed to comply with the requirements of paragraph (a) of this section for subsequent transfers, and, if applicable, the recipient's permit number.

(b) Marine mammal parts may be loaned to another person for a purpose described in paragraph (a)(3) of this section and without the agreement and notification required under paragraphs (a)(5) and (6) of this section, if:

(1) A record of the loan is maintained; and

(2) The loan is for not more than one year. Loans for a period greater than 12 months, including loan extensions or renewals, require notification of the Regional Director under paragraph (a)(6).

(c) Unless other disposition is specified in the permit, a holder of a special exception permit may retain marine mammal parts not destroyed or otherwise disposed of during or after a scientific research or enhancement activity, if such marine mammal parts are:

(1) Maintained as part of a properly curated, professionally accredited collection; or

(2) Made available for purposes of scientific research or enhancement at the request of the Office Director.

(d) Marine mammal parts may be exported and subsequently reimported by a permit holder or subsequent authorized recipient, for the purpose of scientific research, maintenance in a properly curated, professionally accredited scientific collection, or education, provided that:

(1) The permit holder or other person receives no remuneration for the marine mammal part;

(2) A unique number assigned by the permit holder is marked on or affixed

to the marine mammal specimen or container;

(3) The marine mammal part is exported or reimported in compliance with all applicable domestic and foreign laws;

(4) If exported or reimported for educational purposes, the recipient is a museum, educational institution, or equivalent that will ensure that the part is available to the public as part of an educational program; and

(5) Special reports are submitted within 30 days after both export and reimport as required by the Office Director under § 216.38.

[61 FR 21937, May 10, 1996]

§ 216.38 Reporting.

All permit holders must submit annual, final, and special reports in accordance with the requirements established in the permit, and any reporting format established by the Office Director.

[61 FR 21937, May 10, 1996]

§ 216.39 Permit amendments.

(a) *General.* Special exception permits may be amended by the Office Director. Major and minor amendments may be made to permits in response to, or independent of, a request from the permit holder. Amendments must be consistent with the Acts and comply with the applicable provisions of this subpart.

(1) A *major amendment* means any change to the permit specific conditions under § 216.36(a) regarding:

(i) The number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) The manner in which these marine mammals may be taken, imported, exported, or otherwise affected, if the proposed change may result in an increased level of take or risk of adverse impact;

(iii) The location(s) in which the marine mammals may be taken, from which they may be imported, and to which they may be exported, as applicable; and

(iv) The duration of the permit, if the proposed extension would extend the duration of the permit more than 12

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months beyond that established in the original permit.

(2) A *minor amendment* means any amendment that does not constitute a major amendment.

(b) *Amendment requests and proposals.*

(1) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(i) The purpose and nature of the amendment;

(ii) Information, not previously submitted as part of the permit application or subsequent reports, necessary to determine whether the amendment satisfies all issuance criteria set forth at §216.34, and, as appropriate, §216.41, §216.42, and §216.43.

(iii) Any additional information required by the Office Director for purposes of reviewing the proposed amendment.

(2) If an amendment is proposed by the Office Director, the permit holder will be notified of the proposed amendment, together with an explanation.

(c) *Review of proposed amendments.* (1) *Major amendments.* The provisions of §216.33(d) and (e) governing notice of receipt, review and decision shall apply to all proposed major amendments.

(2) *Minor amendments.* (i) After reviewing all appropriate information, the Office Director will provide the permit holder with written notice of the decision on a proposed or requested amendment, together with an explanation for the decision.

(ii) If the minor amendment extends the duration of the permit 12 months or less from that established in the original permit, notice of the minor amendment will be published in the FEDERAL REGISTER within 10 days from the date of the Office Director's decision.

(iii) A minor amendment will be effective upon a final decision by the Office Director.

[61 FR 21937, May 10, 1996]

§216.40 Penalties and permit sanctions.

(a) Any person who violates any provision of this subpart or permit issued thereunder is subject to civil and criminal penalties, permit sanctions and forfeiture as authorized under the Acts, and 15 CFR part 904.

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(b) All special exception permits are subject to suspension, revocation, modification and denial in accordance with the provisions of subpart D of 15 CFR part 904.

[61 FR 21938, May 10, 1996]

§216.41 Permits for scientific research and enhancement.

In addition to the requirements under §§216.33 through 216.38, permits for scientific research and enhancement are governed by the following requirements:

(a) *Applicant.* (1) For each application submitted under this section, the applicant shall be the principal investigator responsible for the overall research or enhancement activity. If the research or enhancement activity will involve a periodic change in the principal investigator or is otherwise controlled by and dependent upon another entity, the applicant may be the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) For any scientific research involving captive maintenance, the application must include supporting documentation from the person responsible for the facility or other temporary enclosure.

(b) *Issuance Criteria.* For the Office Director to issue any scientific research or enhancement permit, the applicant must demonstrate that:

(1) The proposed activity furthers a bona fide scientific or enhancement purpose;

(2) If the lethal taking of marine mammals is proposed:

(i) Non-lethal methods for conducting the research are not feasible; and

(ii) For depleted, endangered, or threatened species, the results will directly benefit that species or stock, or will fulfill a critically important research need.

(3) Any permanent removal of a marine mammal from the wild is consistent with any applicable quota established by the Office Director.

(4) The proposed research will not likely have significant adverse effects on any other component of the marine ecosystem of which the affected species or stock is a part.

(5) For species or stocks designated or proposed to be designated as depleted, or listed or proposed to be listed as endangered or threatened:

(i) The proposed research cannot be accomplished using a species or stock that is not designated or proposed to be designated as depleted, or listed or proposed to be listed as threatened or endangered;

(ii) The proposed research, by itself or in combination with other activities will not likely have a long-term direct or indirect adverse impact on the species or stock;

(iii) The proposed research will either:

(A) Contribute to fulfilling a research need or objective identified in a species recovery or conservation plan, or if there is no conservation or recovery plan in place, a research need or objective identified by the Office Director in stock assessments established under section 117 of the MMPA;

(B) Contribute significantly to understanding the basic biology or ecology of the species or stock, or to identifying, evaluating, or resolving conservation problems for the species or stock; or

(C) Contribute significantly to fulfilling a critically important research need.

(6) For proposed enhancement activities:

(i) Only living marine mammals and marine mammal parts necessary for enhancement of the survival, recovery, or propagation of the affected species or stock may be taken, imported, exported, or otherwise affected under the authority of an enhancement permit. Marine mammal parts would include in this regard clinical specimens or other biological samples required for the conduct of breeding programs or the diagnosis or treatment of disease.

(ii) The activity will likely contribute significantly to maintaining or increasing distribution or abundance, enhancing the health or welfare of the species or stock, or ensuring the survival or recovery of the affected species or stock in the wild.

(iii) The activity is consistent with:

(A) An approved conservation plan developed under section 115(b) of the MMPA or recovery plan developed

under section 4(f) of the ESA for the species or stock; or

(B) If there is no conservation or recovery plan, with the Office Director's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation or recovery plan.

(iv) An enhancement permit may authorize the captive maintenance of a marine mammal from a threatened, endangered, or depleted species or stock only if the Office Director determines that:

(A) The proposed captive maintenance will likely contribute directly to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing necessary biological information, or establishing animal reserves required to support directly these objectives; and

(B) The expected benefit to the species or stock outweighs the expected benefits of alternatives that do not require removal of marine mammals from the wild.

(v) The Office Director may authorize the public display of marine mammals held under the authority of an enhancement permit only if:

(A) The public display is incidental to the authorized captive maintenance;

(B) The public display will not interfere with the attainment of the survival or recovery objectives;

(C) The marine mammals will be held consistent with all requirements and standards that are applicable to marine mammals held under the authority of the Acts and the Animal Welfare Act, unless the Office Director determines that an exception is necessary to implement an essential enhancement activity; and

(D) The marine mammals will be excluded from any interactive program and will not be trained for performance.

(vi) The Office Director may authorize non-intrusive scientific research to be conducted while a marine mammal is held under the authority of an enhancement permit, only if such scientific research:

(A) Is incidental to the permitted enhancement activities; and

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(B) Will not interfere with the attainment of the survival or recovery objectives.

(c) *Restrictions.* (1) The following restrictions apply to all scientific research permits issued under this subpart:

(i) Research activities must be conducted in the manner authorized in the permit.

(ii) Research results shall be published or otherwise made available to the scientific community in a reasonable period of time.

(iii) Research activities must be conducted under the direct supervision of the principal investigator or a co-investigator identified in the permit.

(iv) Personnel involved in research activities shall be reasonable in number and limited to:

(A) Individuals who perform a function directly supportive of and necessary to the permitted research activity; and

(B) Support personnel included for the purpose of training or as backup personnel for persons described in paragraph (c)(1)(iv)(A).

(v) Any marine mammal part imported under the authority of a scientific research permit must not have been obtained as the result of a lethal taking that would be inconsistent with the Acts, unless authorized by the Office Director.

(vi) Marine mammals held under a permit for scientific research shall not be placed on public display, included in an interactive program or activity, or trained for performance unless such activities:

(A) Are necessary to address scientific research objectives and have been specifically authorized by the Office Director under the scientific research permit; and

(B) Are conducted incidental to and do not in any way interfere with the permitted scientific research; and

(C) Are conducted in a manner consistent with provisions applicable to public display, unless exceptions are specifically authorized by the Office Director.

(vii) Any activity conducted incidental to the authorized scientific research activity must not involve any taking of marine mammals beyond

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what is necessary to conduct the research (i.e., educational and commercial photography).

(2) Any marine mammal or progeny held in captive maintenance under an enhancement permit shall be returned to its natural habitat as soon as feasible, consistent with the terms of the enhancement permit and the objectives of an approved conservation or recovery plan. In accordance with section 10(j) of the ESA, the Office Director may authorize the release of any population of an endangered or threatened species outside the current range of such species if the Office Director determines that such release will further the conservation of such species.

[61 FR 21938, May 10, 1996]

§ 216.42 Photography. [Reserved]

§ 216.43 Public display. [Reserved]

§ 216.44 Applicability/transition.

(a) *General.* The regulations of this subpart are applicable to all persons, including persons holding permits or other authorizing documents issued before June 10, 1996, by NMFS for the take, import, export, or conduct of any otherwise prohibited activity involving a marine mammal or marine mammal part for special exception purposes.

(b) *Scientific research.* Any intrusive research as defined in §216.3, initiated after June 10, 1996, must be authorized under a scientific research permit. Intrusive research authorized by the Office Director to be conducted on captive marine mammals held for public display purposes prior to June 10, 1996, must be authorized under a scientific research permit one year after June 10, 1996.

[61 FR 21939, May 10, 1996]

§ 216.45 General Authorization for Level B harassment for scientific research.

(a) *General Authorization.* (1) Persons are authorized under section 104(c)(3)(C) of the MMPA to take marine mammals in the wild by Level B harassment, as defined in §216.3, for purposes of bona fide scientific research *Provided, That:*

(i) They submit a letter of intent in accordance with the requirements of

paragraph (b) of this section, receive confirmation that the General Authorization applies in accordance with paragraph (c) of this section, and comply with the terms and conditions of paragraph (d) of this section; or

(ii) If such marine mammals are listed as endangered or threatened under the ESA, they have been issued a permit under Section 10(a)(1)(A) of the ESA and implementing regulations at 50 CFR parts 217–227, particularly at § 222.23 through § 222.28, to take marine mammals in the wild for the purpose of scientific research, the taking authorized under the permit involves such Level B harassment of marine mammals or marine mammal stocks, and they comply with the terms and conditions of that permit.

(2) Except as provided under paragraph (a)(1)(ii) of this section, no taking, including harassment, of marine mammals listed as threatened or endangered under the ESA is authorized under the General Authorization. Marine mammals listed as endangered or threatened under the ESA may be taken for purposes of scientific research only after issuance of a permit for such activities pursuant to the ESA.

(3) The following types of research activities will likely qualify for inclusion under the General Authorization: Photo-identification studies, behavioral observations, and vessel and aerial population surveys (except aerial surveys over pinniped rookeries at altitudes of less than 1,000 ft).

(b) *Letter of intent.* Except as provided under paragraph (a)(1)(ii) of this section, any person intending to take marine mammals in the wild by Level B harassment for purposes of bona fide scientific research under the General Authorization must submit, at least 60 days before commencement of such research, a letter of intent by certified return/receipt mail to the Chief, Permits Division, F/PR1, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910–3226.

(1) The letter of intent must be submitted by the principal investigator (who shall be deemed the applicant). For purposes of this section, the principal investigator is the individual who

is responsible for the overall research project, or the institution, governmental entity, or corporation responsible for supervision of the principal investigator.

(2) The letter of intent must include the following information:

(i) The name, address, telephone number, qualifications and experience of the applicant and any co-investigator(s) to be conducting the proposed research, and a curriculum vitae for each, including a list of publications by each such investigator relevant to the objectives, methodology, or other aspects of the proposed research;

(ii) The species or stocks of marine mammals (common and scientific names) that are the subject of the scientific research and any other species or stock of marine mammals that may be harassed during the conduct of the research;

(iii) The geographic location(s) in which the research is to be conducted, e.g., geographic name or lat./long.;

(iv) The period(s) of time over which the research will be conducted (up to five years), including the field season(s) for the research, if applicable;

(v) The purpose of the research, including a description of how the proposed research qualifies as bona fide research as defined in § 216.3; and

(vi) The methods to be used to conduct the research.

(3) The letter of intent must be signed, dated, and certified by the applicant as follows:

In accordance with section 104(c)(3)(C) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and implementing regulations (50 CFR part 216), I hereby notify the National Marine Fisheries Service of my intent to conduct research involving only Level B harassment on marine mammals in the wild, and request confirmation that the General Authorization for Level B Harassment for Scientific Research applies to the proposed research as described herein. I certify that the information in this letter of intent is complete, true, and correct to the best of my knowledge and belief, and I understand that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or penalties under the MMPA and implementing regulations. I acknowledge and accept that authority to conduct scientific research on marine mammals in the wild under the General Authorization is a limited conditional authority restricted to

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Level B harassment only, and that any other take of marine mammals, including the conduct of any activity that has the potential to injure marine mammals (i.e., Level A harassment), may subject me to penalties under the MMPA and implementing regulations.

(c) *Confirmation that the General Authorization applies or notification of permit requirement.*

(1) Not later than 30 days after receipt of a letter of intent as described in paragraph (b) of this section, the Chief, Permits Division, NMFS will issue a letter to the applicant either:

(i) Confirming that the General Authorization applies to the proposed scientific research as described in the letter of intent;

(ii) Notifying the applicant that all or part of the research described in the letter of intent is likely to result in a taking of a marine mammal in the wild involving other than Level B harassment and, as a result, cannot be conducted under the General Authorization, and that a scientific research permit is required to conduct all or part of the subject research; or

(iii) Notifying the applicant that the letter of intent fails to provide sufficient information and providing a description of the deficiencies, or notifying the applicant that the proposed research as described in the letter of intent is not bona fide research as defined in §216.3.

(2) A copy of each letter of intent and letter confirming that the General Authorization applies or notifying the applicant that it does not apply will be forwarded to the Marine Mammal Commission.

(3) Periodically, NMFS will publish a summary document in the FEDERAL REGISTER notifying the public of letters of confirmation issued.

(d) *Terms and conditions.* Persons issued letters of confirmation in accordance with paragraph (c) of this section are responsible for complying with the following terms and conditions:

(1) Activities are limited to those conducted for the purposes, by the means, in the locations, and during the periods of time described in the letter of intent and acknowledged as authorized under the General Authorization in the confirmation letter sent pursuant to paragraph (c) of this section;

(2) Annual reports of activities conducted under the General Authorization must be submitted to the Chief, Permits Division (address listed in paragraph (b) of this section) within 90 days of completion of the last field season(s) during the calendar year or, if the research is not conducted during a defined field season, no later than 90 days after the anniversary date of the letter of confirmation issued under paragraph (c) of this section. Annual reports must include:

(i) A summary of research activities conducted;

(ii) Identification of the species and number of each species taken by Level B harassment;

(iii) An evaluation of the progress made in meeting the objectives of the research as described in the letter of intent; and

(iv) Any incidental scientific, educational, or commercial uses of photographs, videotape, and film obtained as a result of or incidental to the research and if so, names of all photographers.

(3) Authorization to conduct research under the General Authorization is for the period(s) of time identified in the letter of intent or for a period of 5 years from the date of the letter of confirmation issued under paragraph (c) of this section, whichever is less, unless extended by the Director or modified, suspended, or revoked in accordance with paragraph (e) of this section;

(4) Activities conducted under the General Authorization may only be conducted under the on-site supervision of the principal investigator or co-investigator(s) named in the letter of intent. All personnel involved in the conduct of activities under the General Authorization must perform a function directly supportive of and necessary for the research being conducted, or be one of a reasonable number of support personnel included for the purpose of training or as back-up personnel;

(5) The principal investigator must notify the appropriate Regional Director, NMFS, (Regional Director) in writing at least 2 weeks before initiation of on-site activities. The Regional Director shall consider this information in efforts to coordinate field research activities to minimize adverse impacts

on marine mammals in the wild. The principal investigator must cooperate with coordination efforts by the Regional Director in this regard;

(6) If research activities result in a taking which exceeds Level B harassment, the applicant shall:

(i) Report the taking within 12 hours to the Director, Office of Protected Resources, or his designee as set forth in the letter authorizing research; and

(ii) Temporarily discontinue for 72 hours all field research activities that resulted in the taking. During this time period, the applicant shall consult with NMFS as to the circumstances surrounding the taking and any precautions necessary to prevent future taking, and may agree to amend the research protocol, as deemed necessary by NMFS.

(7) NMFS may review scientific research conducted pursuant to the General Authorization. If requested by NMFS, the applicant must cooperate with any such review and shall:

(i) Allow any employee of NOAA or any other person designated by the Director, Office of Protected Resources to observe research activities; and

(ii) Provide any documents or other information relating to the scientific research;

(8) Any photographs, videotape, or film obtained during the conduct of research under the General Authorization must be identified by a statement that refers to the General Authorization or ESA permit number, and includes the file number provided by NMFS in the confirmation letter, the name of the photographer, and the date the image was taken. This statement must accompany the image(s) in all subsequent uses or sales. The annual report must note incidental scientific, educational, or commercial uses of the images, and if there are any such uses, the names of all photographers; and

(9) Persons conducting scientific research under authority of the General Authorization may not transfer or assign any authority granted thereunder to any other person.

(e) *Suspension, revocation, or modification.* (1) NMFS may suspend, revoke, or modify the authority to conduct scientific research under the General Authorization if:

(i) The letter of intent included false information or statements of a material nature;

(ii) The research does not constitute bona fide scientific research;

(iii) Research activities result in takings of marine mammals other than by Level B harassment;

(iv) Research activities differ from those described in the letter of intent submitted by the applicant and letter of confirmation issued by NMFS; or

(v) The applicant violates any term or condition set forth in this section.

(2) Any suspension, revocation, or modification is subject to the requirements of 15 CFR part 904.

[59 FR 50376, Oct. 3, 1994]

§ 216.46 U.S. citizens on foreign flag vessels operating under the International Dolphin Conservation Program.

The MMPA's provisions do not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations in the ETP which are outside the U.S. exclusive economic zone (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)), while employed on a fishing vessel of a harvesting nation that is participating in, and in compliance with, the IDCP.

[65 FR 56, Jan. 3, 2000]

§ 216.47 Access to marine mammal tissue, analyses, and data.

(a) *Applications for the National Marine Mammal Tissue Bank samples (NMMTB).* (1) A principal investigator, contributor or holder of a scientific research permit issued in accordance with the provisions of this subpart may apply for access to a tissue specimen sample in the NMMTB. Applicants for tissue specimen samples from the NMMTB must submit a signed written request with attached study plan to the Marine Mammal Health and Stranding Response Program (MMHSRP) Program Manager, Office of Protected Resources, NMFS. The written request must include:

(i) A clear and concise statement of the proposed use of the banked tissue specimen. The applicant must demonstrate that the proposed use of the

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banked tissue is consistent with the goals of the NMMTB and the MMHSRP.

(A) The goals of the MMHSRP are to facilitate the collection and dissemination of reference data on marine mammals and health trends of marine mammal populations in the wild; to correlate the health of marine mammals and marine mammal populations in the wild with available data on physical, chemical, and biological environmental parameters; and to coordinate effective responses to unusual mortality events.

(B) The goal of the NMMTB is to maintain quality controlled marine mammal tissues that will permit retrospective analyses to determine environmental trends of contaminants and other analytes of interest and that will provide the highest quality samples for analyses using new and innovative techniques.

(ii) A copy of the applicant's scientific research permit. The applicant must demonstrate that the proposed use of the banked tissue is authorized by the permit;

(iii) Name of principal investigator, official title, and affiliated research or academic organization;

(iv) Specific tissue sample and quantity desired;

(v) Research facility where analyses will be conducted. The applicant must demonstrate that the research facility will follow the Analytical Quality Assurance (AQA) program, which was designed to ensure the accuracy, precision, level of detection, and inter-compatibility of data resulting from chemical analyses of marine mammal tissues. The AQA consists of annual interlaboratory comparisons and the development of control materials and standard reference materials for marine mammal tissues;

(vi) Verification that funding is available to conduct the research;

(vii) Estimated date for completion of research, and schedule/date of subsequent reports;

(viii) Agreement that all research findings based on use of the banked tissue will be reported to the NMMTB, MMHSRP Program Manager and the contributor; and the sequences of tissue specimen samples that are used/released for genetic analyses (DNA se-

quencing) will be archived in the National Center for biotechnology Information's GenBank. Sequence accessions in GenBank should document the source, citing a NIST field number that identifies the animal; and

(ix) Agreement that credit and acknowledgment will be given to U.S. Fish and Wildlife Service (USFWS), US Geologic Service (USGS), National Institute of Standards and Technology (NIST), the Minerals Management Service (MMS), NMFS, the NMMTB, and the collector for use of banked tissues.

(2) The applicant shall insert the following acknowledgment in all publications, abstracts, or presentations based on research using the banked tissue:

The specimens used in this study were collected by [the contributor] and provided by the National Marine Mammal Tissue Bank, which is maintained in the National Biomonitoring Specimen Bank at NIST and which is operated under the direction of NMFS with the collaboration of MMS, USGS, USFWS, and NIST through the Marine Mammal Health and Stranding Response Program [and the Alaska Marine Mammal Tissue Archival Project if the samples are from Alaska].

(3) Upon submission of a complete application, the MMHSRP Program Manager will send the request and attached study plan to the following entities which will function as the review committee:

(i) Appropriate Federal agency (NMFS or USFWS) marine mammal management office for that particular species; and

(ii) Representatives of the NMMTB Collaborating Agencies (NMFS, USFS, USGS Biological Resources Division, and NIST) If no member of the review committee is an expert in the field that is related to the proposed research activity, any member may request an outside review of the proposal, which may be outside of NMFS or USFWS but within the Federal Government.

(4) The MMHSRP Program Manager will send the request and attached study plan to any contributor(s) of the tissue specimen sample. The contributor(s) of the sample may submit comments on the proposed research activity to the Director, Office of Protected Resources within 30 days of the date

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that the request was sent to the contributor(s).

(5) The USFWS Representative of the NMMTB Collaborating Agencies will be chair of review committees for requests involving species managed by the DOI. The MMHSRP Program Manager will be chair of all other review committees.

(6) Each committee chair will provide recommendations on the request and an evaluation of the study plan to the Director, Office of Protected Resources, NMFS.

(7) The Director, Office of Protected Resources, NMFS, will make the final decision on release of the samples based on the advice provided by the review committee, comments received from any contributor(s) of the sample within the time provided in paragraph (a)(4) of this section, and determination that the proposed use of the banked tissue specimen is consistent with the goals of the MMHSRP and the NMMTB. The Director will send a written decision to the applicant and send copies to all review committee members. If the samples are released, the response will indicate whether the samples have been homogenized and, if not, the homogenization schedule.

(8) The applicant will bear all shipping and homogenization costs related to use of any specimens from the NMMTB.

(9) The applicant will dispose of the tissue specimen sample consistent with the provisions of the applicant's scientific research permit after the research is completed, unless the requester submits another request and receives approval pursuant to this section. The request must be submitted within three months after the original project has been completed.

(b) [Reserved]

[69 FR 41979, July 13, 2004]

§§ 216.48–216.49 [Reserved]

Subpart E—Designated Ports

§ 216.50 Importation at designated ports.

(a) Any marine mammal or marine mammal product which is subject to the jurisdiction of the National Marine Fisheries Service, National Oceanic

and Atmospheric Administration, Department of Commerce and is intended for importation into the United States shall be subject to the provisions of 50 CFR part 14.

(b) For the information of importers, designated ports of entry for the United States are:

- New York, N.Y.
- Miami, Fla.
- Chicago, Ill.
- San Francisco, Calif.
- Los Angeles, Calif.
- New Orleans, La.
- Seattle, Wash.
- Honolulu, Hi.

(c) Additionally, marine mammals or marine mammal products which are entered into Alaska, Hawaii, Puerto Rico, Guam, American Samoa or the Virgin Islands and which are not to be forwarded or transhipped within the United States may be imported through the following ports:

- Alaska—Juneau, Anchorage, Fairbanks
- Hawaii—Honolulu
- Puerto Rico—San Juan
- Guam—Honolulu, Hi.
- American Samoa—Honolulu, Hi.
- Virgin Islands—San Juan, P.R.

(d) Importers are advised to see 50 CFR part 14 for importation requirements and information.

[39 FR 1852, Jan. 15, 1974. Redesignated at 59 FR 50376, Oct. 3, 1994]

Subpart F—Pribilof Islands, Taking for Subsistence Purposes

§ 216.71 Allowable take of fur seals.

Pribilovians may take fur seals on the Pribilof Islands if such taking is

- (a) For subsistence uses, and
- (b) Not accomplished in a wasteful manner.

[51 FR 24840, July 9, 1986. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.72 Restrictions on taking.

(a) The harvests of seals on St. Paul and St. George Islands shall be treated independently for the purposes of this section. Any suspension, termination, or extension of the harvest is applicable only to the island for which it is issued.

(b) By April 1 of every third year, beginning April 1994, the Assistant Administrator will publish in the FEDERAL REGISTER a summary of the preceding 3 years of harvesting and a discussion of the number of seals expected to be taken annually over the next 3 years to satisfy the subsistence requirements of each island. This discussion will include an assessment of factors and conditions on St. Paul and St. George Islands that influence the need by Pribilof Aleuts to take seals for subsistence uses and an assessment of any changes to those conditions indicating that the number of seals that may be taken for subsistence each year should be made higher or lower. Following a 30-day public comment period, a final notification of the expected annual harvest levels for the next 3 years will be published.

(c)(1) No fur seal may be taken on the Pribilof Islands before June 23 of each year.

(2) No fur seal may be taken except by experienced sealers using the traditional harvesting methods, including stunning followed immediately by exsanguination. The harvesting method shall include organized drives of subadult males to killing fields unless it is determined by the NMFS representatives, in consultation with the Pribilovians conducting the harvest, that alternative methods will not result in increased disturbance to the rookery or the increased accidental take of female seals.

(3) Any taking of adult fur seals or pups, or the intentional taking of subadult female fur seals is prohibited.

(4) Only subadult male fur seals 124.5 centimeters or less in length may be taken.

(5) Seals with tags and/or entangling debris may only be taken if so directed by NMFS scientists.

(d) The scheduling of the harvest is at the discretion of the Pribilovians, but must be such as to minimize stress to the harvested seals. The Pribilovians must give adequate advance notice of their harvest schedules to the NMFS representatives to allow for necessary monitoring activities. Scheduling must be consistent with the following restrictions:

(1) *St. Paul Island*—Seals may only be harvested from the following haulout areas: Zapadni, English Bay, Northeast Point, Polovina, Lukanin, Kitovi, and Reef. No haulout area may be harvested more than once per week.

(2) *St. George Island*—Seals may only be harvested from the following haulout areas: Northeast and Zapadni. Neither haulout area may be harvested more than twice per week.

(e)(1) The Assistant Administrator is required to suspend the take provided for in §215.31 when:

(i) He determines, after reasonable notice by NMFS representatives to the Pribilovians on the island, that the subsistence needs of the Pribilovians on the island have been satisfied;

or

(ii) He determines that the harvest is otherwise being conducted in a wasteful manner; or

(iii) The lower end of the range of the estimated subsistence level provided in the notice issued under paragraph (b) of this section is reached.

(2) A suspension based on a determination under paragraph (e)(1)(ii) of this section may be lifted by the Assistant Administrator if he finds that the conditions which led to the determination that the harvest was being conducted in a wasteful manner have been remedied.

(3) A suspension issued in accordance with paragraph (e)(1)(iii) of this section may not exceed 48 hours in duration and shall be followed immediately by a review of the harvest data to determine if a finding under paragraph (e)(1)(i) of this section is warranted. If a the harvest is not suspended under paragraph (e)(1)(i) of this section, the Assistant Administrator must provide a revised estimate of the number of seals required to satisfy the Pribilovians' subsistence needs.

(f) The Assistant Administrator shall terminate the take provided for in §215.31 on August 8 of each year or when it is determined under paragraph (e)(1)(i) of this section that the subsistence needs of the Pribilovians on the

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island have been satisfied, whichever occurs first.

[51 FR 24840, July 9, 1986, as amended at 57 FR 33902, July 31, 1992; 59 FR 35474, July 12, 1994. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.73 Disposition of fur seal parts.

Except for transfers to other Alaskan Natives for barter or sharing for personal or family consumption, no part of a fur seal taken for subsistence uses may be sold or otherwise transferred to any person unless it is a nonedible by-product which:

(a) Has been transformed into an article of handicraft, or

(b) Is being sent by an Alaskan Native directly, or through a registered agent, to a tannery registered under 50 CFR 216.23(c) for the purpose of processing, and will be returned directly to the Alaskan Native for conversion into an article of handicraft, or

(c) Is being sold or transferred to an Alaskan Native, or to an agent registered under 50 CFR 216.23(c) for resale or transfer to an Alaskan Native, who will convert the seal part into a handicraft.

[51 FR 24840, July 9, 1986. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.74 Cooperation with Federal officials.

Pribilovians who engage in the harvest of seals are required to cooperate with scientists engaged in fur seal research on the Pribilof Islands who may need assistance in recording tag or other data and collecting tissue or other fur seal samples for research purposes. In addition, Pribilovians who take fur seals for subsistence uses must, consistent with 5 CFR 1320.7(k)(3), cooperate with the NMF's representatives on the Pribilof Islands who are responsible for compiling the following information on a daily basis:

(a) The number of seals taken each day in the subsistence harvest,

(b) The extent of the utilization of fur seals taken, and

(c) Other information determined by the Assistant Administrator to be necessary for determining the subsistence

needs of the Pribilovians or for making determinations under § 215.32(e).

[51 FR 24840, July 9, 1986. Redesignated at 61 FR 11750, Mar. 22, 1996]

Subpart G—Pribilof Islands Administration

§ 216.81 Visits to fur seal rookeries.

From June 1 to October 15 of each year, no person, except those authorized by a representative of the National Marine Fisheries Service, or accompanied by an authorized employee of the National Marine Fisheries Service, shall approach any fur seal rookery or hauling grounds nor pass beyond any posted sign forbidding passage.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.82 Dogs prohibited.

In order to prevent molestation of fur seal herds, the landing of any dogs at Pribilof Islands is prohibited.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.83 Importation of birds or mammals.

No mammals or birds, except household cats, canaries and parakeets, shall be imported to the Pribilof Islands without the permission of an authorized representative of the National Marine Fisheries Service.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.84 [Reserved]

§ 216.85 Walrus and Otter Islands.

By Executive Order 1044, dated February 27, 1909, Walrus and Otter Islands were set aside as bird reservations. All persons are prohibited to land on these islands except those authorized by the appropriate representative of the National Marine Fisheries Service.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.86 Local regulations.

Local regulations will be published from time to time and will be brought to the attention of local residents and persons assigned to duty on the Islands

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by posting in public places and brought to the attention of tourists by personal notice.

[41 FR 49488, Nov. 9, 1976. Redesignated at 61 FR 11750, Mar. 22, 1996]

§ 216.87 Wildlife research.

(a) Wildlife research, other than research on North Pacific fur seals, including specimen collection, may be permitted on the Pribilof Islands subject to the following conditions:

(1) Any person or agency, seeking to conduct such research shall first obtain any Federal or State of Alaska permit required for the type of research involved.

(2) Any person seeking to conduct such research shall obtain prior approval of the Director, Pribilof Islands Program, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, 1700 Westlake Avenue North, Seattle, WA 98109, by filing with the Director an application which shall include:

(i) Copies of the required Federal and State of Alaska permits; and

(ii) A resume of the intended research program.

(3) All approved research shall be subject to all regulations and administrative procedures in effect on the Pribilof Islands, and such research shall not commence until approval from the Director is received.

(4) Any approved research program shall be subject to such terms and conditions as the Director, Pribilof Islands Program deems appropriate.

(5) Permission to utilize the Pribilof Islands to conduct an approved research program may be revoked by the Director, Pribilof Islands Program at any time for noncompliance with any terms and conditions, or for violations of any regulation or administrative procedure in effect on the Pribilof Islands.

[43 FR 5521, Feb. 9, 1978. Redesignated at 61 FR 11750, Mar. 22, 1996]

Subpart H—Dolphin Safe Tuna Labeling

AUTHORITY: 16 U.S.C. 1385.

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§ 216.90 Purposes.

This subpart governs the requirements for using the official mark described in § 216.95 or an alternative mark that refers to dolphins, porpoises, or marine mammals, to label tuna or tuna products offered for sale in or exported from the United States using the term dolphin-safe or suggesting the tuna were harvested in a manner not injurious to dolphins.

[69 FR 55307, Sept. 13, 2004]

§ 216.91 Dolphin-safe labeling standards.

(a) It is a violation of Section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna products that are exported from or offered for sale in the United States to include on the label of those products the term “dolphin-safe” or any other term or symbol that claims or suggests that the tuna contained in the products were harvested using a method of fishing that is not harmful to dolphins if the products contain tuna harvested:

(1) *ETP large purse seine vessel*. In the ETP by a purse seine vessel of greater than 400 st (362.8 mt) carrying capacity unless:

(i) the documentation requirements for dolphin-safe tuna under § 216.92 and 216.93 are met;

(ii) No dolphins were killed or seriously injured during the sets in which the tuna were caught; and

(iii) None of the tuna were caught on a trip using a purse seine net intentionally deployed on or to encircle dolphins, provided that this paragraph (a)(1)(iii) will not apply if the Assistant Administrator publishes a notification in the FEDERAL REGISTER announcing a finding under 16 U.S.C. 1385(g)(2) that the intentional deployment of purse seine nets on or encirclement of dolphins is not having a significant adverse impact on any depleted stock.

(2) *Non-ETP purse seine vessel*. Outside the ETP by a vessel using a purse seine net:

(i) In a fishery in which the Assistant Administrator has determined that a

regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the ETP), unless such products are accompanied by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) In any other fishery unless the products are accompanied by a written statement executed by the Captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular trip on which the tuna was harvested;

(3) *Driftnet*. By a vessel engaged in large-scale driftnet fishing; or

(4) *Other fisheries*. By a vessel in a fishery other than one described in paragraphs (a)(1) through (a)(3) of this section that is identified by the Assistant Administrator as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement, executed by the Captain of the vessel and an observer participating in a national or international program acceptable to the Assistant Administrator, that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Assistant Administrator determines that such an observer statement is necessary.

(b) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to willingly and knowingly use a label referred to in this section in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the IDCP.

(c) A tuna product that is labeled with the official mark, described in § 216.95, may not be labeled with any other label or mark that refers to dolphins, porpoises, or marine mammals.

[69 FR 55307, Sept. 13, 2004]

§ 216.92 Dolphin-safe requirements for tuna harvested in the ETP by large purse seine vessels.

(a) *U.S. vessels*. Tuna products that contain tuna harvested by U.S. flag purse seine vessels of greater than 400 st (362.8 mt) carrying capacity in the ETP may be labeled dolphin-safe only if the following requirements are met:

(1) Tuna Tracking Forms containing a complete record of all the fishing activities on the trip, certified by the vessel Captain and the observer, are submitted to the Administrator, Southwest Region, at the end of the fishing trip during which the tuna was harvested;

(2) The tuna is delivered for processing to a U.S. tuna processor in a plant located in one of the 50 states, Puerto Rico, or American Samoa that is in compliance with the tuna tracking and verification requirements of § 216.93; and

(3) The tuna or tuna products meet the dolphin-safe labeling standards under § 216.91.

(b) *Imported tuna*.

(1) Yellowfin tuna or tuna products harvested in the ETP by vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if the yellowfin tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that has obtained an affirmative finding under § 216.24(f)(8).

(2) Tuna or tuna products, other than yellowfin tuna, harvested in the ETP by purse seine vessels of greater than 400 st (362.8 mt) carrying capacity and presented for import into the United States may be labeled dolphin-safe only if:

(i) The tuna was harvested by a U.S. vessel fishing in compliance with the requirements of the IDCP and applicable U.S. law, or by a vessel belonging to a nation that is a Party to the Agreement on the IDCP or has applied to become a Party and is adhering to all the requirements of the Agreement on the IDCP Tuna Tracking and Verification Plan;

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(ii) The tuna or tuna products are accompanied by a properly completed FCO; and

(iii) The tuna or tuna products are accompanied by valid documentation signed by a representative of the appropriate IDCP member nation, containing the harvesting vessel names and tuna tracking form numbers represented in the shipment, and certifying that:

(A) There was an IDCP approved observer on board the vessel(s) during the entire trip(s); and

(B) The tuna contained in the shipment were caught according to the dolphin-safe labeling standards of §216.91.

[69 FR 55307, Sept. 13, 2004]

§216.93 Tracking and verification program.

The Administrator, Southwest Region, has established a national tracking and verification program to accurately document the dolphin-safe condition of tuna, under the standards set forth in §§216.91 and 216.92. The tracking program includes procedures and reports for use when importing tuna into the United States and during U.S. purse seine fishing, processing, and marketing in the United States and abroad. Verification of tracking system operations is attained through the establishment of audit and document review requirements. The tracking program is consistent with the international tuna tracking and verification program adopted by the Parties to the Agreement on the IDCP.

(a) *Tuna tracking forms.* Whenever a U.S. flag tuna purse seine vessel of greater than 400 st (362.8 mt) carrying capacity fishes in the ETP, IDCP approved Tuna Tracking Forms (TTFs), bearing a unique number assigned to that trip, are used by the observer to record every set made during that trip. One TTF is used to record dolphin-safe sets and a second TTF is used to record non-dolphin-safe sets. The information entered on the TTFs following each set includes the date, well number, weights by species composition, estimated tons loaded, and additional notes, if any. The observer and the vessel engineer initial the entry as soon as possible following each set, and the vessel captain and observer review and sign both

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TTFs at the end of the fishing trip certifying that the information on the forms is accurate. TTFs are confidential official documents of the IDCP, consistent with Article XVIII of the Agreement on the IDCP, and the Agreement on the IDCP Rules of Confidentiality.

(b) *Dolphin-Safe Certification.* Upon request, the Office of the Administrator, Southwest Region, will provide written certification that tuna harvested by U.S. purse seine vessels greater than 400 st (362.8 mt) carrying capacity is dolphin-safe, but only if NMFS' review of the TTFs for the subject trip shows that the tuna for which the certification is requested is dolphin-safe under the requirements of the Agreement on the IDCP and U.S. law.

(c) *Tracking fishing operations.* (1) During ETP fishing trips by purse seine vessels greater than 400 st (362.8 mt) carrying capacity, tuna caught in sets designated as dolphin-safe by the vessel observer must be stored separately from tuna caught in non-dolphin-safe sets from the time of capture through unloading. Vessel personnel will decide into which wells tuna will be loaded. The observer will initially designate whether each set is dolphin-safe or not, based on his/her observation of the set. The observer will initially identify a vessel fish well as dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which no dolphin died or was seriously injured. The observer will initially identify a vessel fish well as non-dolphin-safe if the first tuna loaded into the well during a trip was captured in a set in which a dolphin died or was seriously injured. Any tuna loaded into a well previously designated non-dolphin-safe is considered non-dolphin-safe tuna. The observer will change the designation of a dolphin-safe well to non-dolphin-safe if any tuna are loaded into the well that were captured in a set in which a dolphin died or was seriously injured.

(2) The captain, managing owner, or vessel agent of a U.S. purse seine vessel greater than 400 st (362.8 mt) returning to port from a trip, any part of which included fishing in the ETP, must provide at least 48 hours notice of the vessel's intended place of landing, arrival

time, and schedule of unloading to the Administrator, Southwest Region.

(3) If the trip terminates when the vessel enters port to unload part or all of its catch, new TTFs will be assigned to the new trip, and any information concerning tuna retained on the vessel will be recorded as the first entry on the TTFs for the new trip. If the trip is not terminated following a partial unloading, the vessel will retain the original TTFs and submit a copy of those TTFs to the Administrator, Southwest Region, within 5 working days. In either case, the species and amount unloaded will be noted on the respective originals.

(4) Tuna offloaded to trucks, storage facilities, or carrier vessels must be loaded or stored in such a way as to maintain and safeguard the identification of the dolphin-safe or non-dolphin-safe designation of the tuna as it left the fishing vessel.

(5)(i) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) directly to a U.S. canner within the 50 states, Puerto Rico, or American Samoa, or in any port and subsequently loaded aboard a carrier vessel for transport to a U.S. processing location, a NMFS representative may meet the U.S. purse seine vessel to receive the TTFs from the vessel observer and to monitor the handling of dolphin-safe and non-dolphin-safe tuna.

(ii) If a NMFS representative does not meet the vessel in port at the time of arrival, the captain of the vessel or the vessel's managing office must assure delivery of the TTFs to the Administrator, Southwest Region, from that location within 5 working days of the end of the trip. Alternatively, if the captain approves and notifies the Administrator, Southwest Region, the captain may entrust the observer to deliver the signed TTFs to the local office of the IATTC.

(iii) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity directly to a processing facility located outside the jurisdiction of the United States in a country that is a Party to the Agreement on the IDCP, the national authority in whose area of jurisdiction the tuna is to be processed

will assume the responsibility for tracking and verification of the tuna offloaded. If a representative of the national authority meets the vessel in port, that representative will receive the original TTFs and assume the responsibility for providing copies of the TTFs to the Administrator, Southwest Region. If a representative of the national authority does not meet the vessel, the fishing vessel captain or the vessel's managing office must assure delivery of the completed TTFs in accordance with paragraphs (ii) and (v) of this section.

(iv) When ETP caught tuna is offloaded from a U.S. purse seine vessel greater than 400 st (362.8 mt) carrying capacity in a country that is not a Party to the Agreement on the IDCP, the tuna becomes the tracking and verification responsibility of the national authority of the processing facility when it is unloaded from the fishing vessel. The captain or the vessel's managing office must assure delivery of the completed TTFs in accordance with paragraphs (ii) and (v) of this section.

(v) TTFs are confidential documents of the IDCP. Vessel captains and managing offices may not provide copies of TTFs to any representatives of private organizations or non-member states.

(d) *Tracking cannery operations.* (1) Whenever a U.S. tuna canning company in the 50 states, Puerto Rico, or American Samoa receives a domestic or imported shipment of ETP caught tuna for processing, a NMFS representative may be present to monitor delivery and verify that dolphin-safe and non-dolphin-safe tuna are clearly identified and remain segregated. Such inspections may be scheduled or unscheduled, and cannery must allow the NMFS representative access to all areas and records.

(2) Tuna processors must submit a report to the Administrator, Southwest Region, of all tuna received at their processing facilities in each calendar month whether or not the tuna is actually canned or stored during that month. Monthly cannery receipt reports must be submitted electronically or by mail before the last day of the

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month following the month being reported. Monthly reports must contain the following information:

(i) *Domestic receipts*: dolphin-safe status, species, condition (round, loin, dressed, gilled and gutted, other), weight in short tons to the fourth decimal, ocean area of capture (ETP, western Pacific, Indian, eastern and western Atlantic, other), catcher vessel, trip dates, carrier name, unloading dates, and location of unloading.

(ii) *Import receipts*: In addition to the information required in paragraph (d)(2)(i) of this section, a copy of the FCO for each imported receipt must be provided.

(3) Tuna processors must report on a monthly basis the amounts of ETP-caught tuna that were immediately utilized upon receipt or removed from cold storage. This report may be submitted in conjunction with the monthly report required in paragraph (d)(2) of this section. This report must contain:

(i) The date of removal from cold storage or disposition;

(ii) Storage container or lot identifier number(s) and dolphin-safe or non-dolphin-safe designation of each container or lot; and

(iii) Details of the disposition of fish (for example, canning, sale, rejection, etc.).

(4) During canning activities, non-dolphin-safe tuna may not be mixed in any manner or at any time during processing with any dolphin-safe tuna or tuna products and may not share the same storage containers, cookers, conveyers, tables, or other canning and labeling machinery.

(e) *Tracking imports*. All tuna products, except fresh tuna, that are imported into the United States must be accompanied by a properly certified FCO as required by §216.24(f)(2). For tuna tracking purposes, copies of FCOs and associated certifications must be submitted by the importer of record to the Administrator, Southwest Region, within 30 days of the shipment's entry into the commerce of the United States as required by §216.24(f)(3)(ii).

(f) *Verification requirements*—(1) *Record maintenance*. Any exporter, transshipper, importer, processor, or wholesaler/distributor of any tuna or tuna products must maintain records

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related to that tuna for at least 2 years. These records include, but are not limited to: FCOs and required certifications, any reports required in paragraphs (a), (b) and (d) of this section, invoices, other import documents, and trip reports.

(2) *Record submission*. Within 30 days of receiving a shipment of tuna or tuna products, any exporter, transshipper, importer, processor, wholesaler/distributor of tuna or tuna products must submit to the Administrator, Southwest Region, all corresponding FCOs and required certifications for those tuna or tuna products.

(3) *Audits and spot checks*. Upon request of the Administrator, Southwest Region, any exporter, transshipper, importer, processor, or wholesaler/distributor of tuna or tuna products must provide the Administrator, Southwest Region, timely access to all pertinent records and facilities to allow for audits and spot-checks on caught, landed, stored, and processed tuna.

(g) *Confidentiality of proprietary information*. Information submitted to the Assistant Administrator under this section will be treated as confidential in accordance with NOAA Administrative Order 216-100 "Protection of Confidential Fisheries Statistics."

[69 FR 55307, Sept. 13, 2004, as amended at 70 FR 19009, Apr. 12, 2005]

§216.94 False statements or endorsements.

Any person who knowingly and willfully makes a false statement or false endorsement required by §216.92 is liable for a civil penalty not to exceed \$100,000, that may be assessed in an action brought in any appropriate District Court of the United States on behalf of the Secretary.

[61 FR 27794, June 3, 1996. Redesignated at 69 FR 55307, Sept. 13, 2004]

§216.95 Official mark for "Dolphin-safe" tuna products.

(a) This is the "official mark" (see figure 1) designated by the United States Department of Commerce that may be used to label tuna products that meet the "dolphin-safe" standards set forth in the Dolphin Protection Consumer Information Act, 16 U.S.C.

1385, and implementing regulations at §§ 216.91 through 216.94:

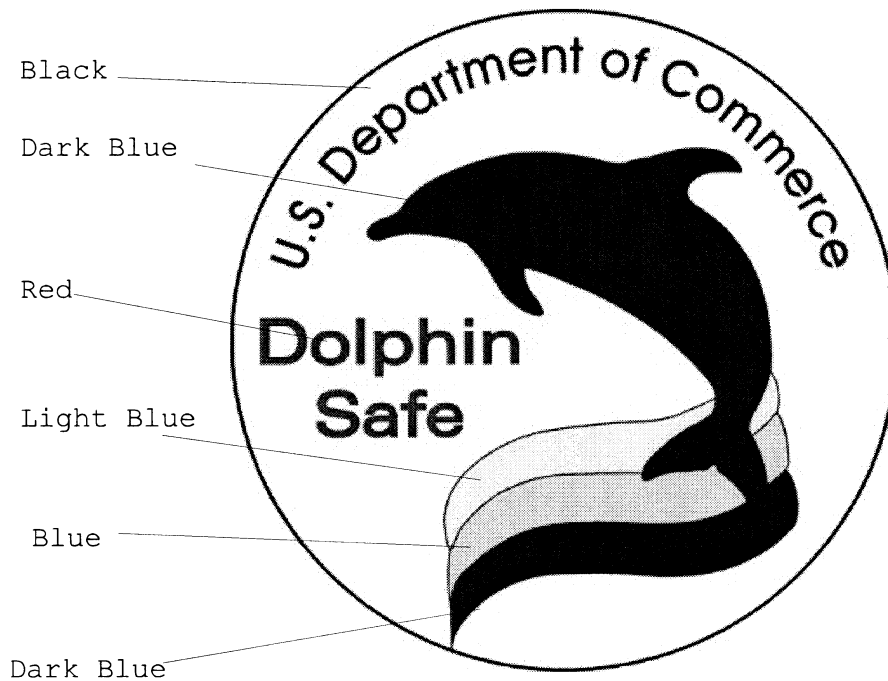


Figure 1.

(b) *Location and size of the official mark.* The official mark on labels must allow the consumer to identify the official mark and be similar in design and scale to figure 1. A full color version of the official mark is available at <http://swr.ucsd.edu/dsl.htm>.

[65 FR 34410, May 30, 2000. Redesignated at 69 FR 55307, Sept. 13, 2004]

Subpart I—General Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities

SOURCE: 61 FR 15887, Apr. 10, 1996, unless otherwise noted.

§ 216.101 Purpose.

The regulations in this subpart implement section 101(a)(5) (A) through (D) of the Marine Mammal Protection Act of 1972, as amended, 16 U.S.C. 1371(a)(5), which provides a mechanism for allowing, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographic region.

§ 216.102 Scope.

The taking of small numbers of marine mammals under section 101(a)(5)

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(A) through (D) of the Marine Mammal Protection Act may be allowed only if the National Marine Fisheries Service:

(a) Finds, based on the best scientific evidence available, that the total taking by the specified activity during the specified time period will have a negligible impact on species or stock of marine mammal(s) and will not have an unmitigable adverse impact on the availability of those species or stocks of marine mammals intended for subsistence uses;

(b) Prescribes either regulations under §216.106, or requirements and conditions contained within an incidental harassment authorization issued under §216.107, setting forth permissible methods of taking and other means of effecting the least practicable adverse impact on the species or stock of marine mammal and its habitat and on the availability of the species or stock of marine mammal for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance; and

(c) Prescribes either regulations or requirements and conditions contained within an incidental harassment authorization, as appropriate, pertaining to the monitoring and reporting of such taking. The specific regulations governing certain specified activities are contained in subsequent subparts of this part.

§216.103 Definitions.

In addition to definitions contained in the MMPA, and in §216.3, and unless the context otherwise requires, in subsequent subparts to this part:

Arctic waters means the marine and estuarine waters north of 60° N. lat.

Citizens of the United States and *U.S. citizens* mean individual U.S. citizens or any corporation or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13). U.S. Federal, state and local government agencies shall also constitute citizens of the United States for purposes of this part.

Incidental harassment, incidental taking and *incidental, but not intentional, taking* all mean an accidental taking. This does not mean that the taking is unexpected, but rather it includes

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those takings that are infrequent, unavoidable or accidental. (A complete definition of “take” is contained in §216.3).

Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Small numbers means a portion of a marine mammal species or stock whose taking would have a negligible impact on that species or stock.

Specified activity means any activity, other than commercial fishing, that takes place in a specified geographical region and potentially involves the taking of small numbers of marine mammals.

Specified geographical region means an area within which a specified activity is conducted and that has certain biogeographic characteristics.

Unmitigable adverse impact means an impact resulting from the specified activity:

(1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:

(i) Causing the marine mammals to abandon or avoid hunting areas;

(ii) Directly displacing subsistence users; or

(iii) Placing physical barriers between the marine mammals and the subsistence hunters; and

(2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

§216.104 Submission of requests.

(a) In order for the National Marine Fisheries Service to consider authorizing the taking by U.S. citizens of small numbers of marine mammals incidental to a specified activity (other than commercial fishing), or to make a finding that an incidental take is unlikely to occur, a written request must be submitted to the Assistant Administrator. All requests must include the following information for their activity:

(1) A detailed description of the specific activity or class of activities that

can be expected to result in incidental taking of marine mammals;

(2) The date(s) and duration of such activity and the specific geographical region where it will occur;

(3) The species and numbers of marine mammals likely to be found within the activity area;

(4) A description of the status, distribution, and seasonal distribution (when applicable) of the affected species or stocks of marine mammals likely to be affected by such activities;

(5) The type of incidental taking authorization that is being requested (i.e., takes by harassment only; takes by harassment, injury and/or death) and the method of incidental taking;

(6) By age, sex, and reproductive condition (if possible), the number of marine mammals (by species) that may be taken by each type of taking identified in paragraph (a)(5) of this section, and the number of times such takings by each type of taking are likely to occur;

(7) The anticipated impact of the activity upon the species or stock of marine mammal;

(8) The anticipated impact of the activity on the availability of the species or stocks of marine mammals for subsistence uses;

(9) The anticipated impact of the activity upon the habitat of the marine mammal populations, and the likelihood of restoration of the affected habitat;

(10) The anticipated impact of the loss or modification of the habitat on the marine mammal populations involved;

(11) The availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, their habitat, and on their availability for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance;

(12) Where the proposed activity would take place in or near a traditional Arctic subsistence hunting area and/or may affect the availability of a species or stock of marine mammal for Arctic subsistence uses, the applicant must submit either a plan of coopera-

tion or information that identifies what measures have been taken and/or will be taken to minimize any adverse effects on the availability of marine mammals for subsistence uses. A plan must include the following:

(i) A statement that the applicant has notified and provided the affected subsistence community with a draft plan of cooperation;

(ii) A schedule for meeting with the affected subsistence communities to discuss proposed activities and to resolve potential conflicts regarding any aspects of either the operation or the plan of cooperation;

(iii) A description of what measures the applicant has taken and/or will take to ensure that proposed activities will not interfere with subsistence whaling or sealing; and

(iv) What plans the applicant has to continue to meet with the affected communities, both prior to and while conducting the activity, to resolve conflicts and to notify the communities of any changes in the operation;

(13) The suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species, the level of taking or impacts on populations of marine mammals that are expected to be present while conducting activities and suggested means of minimizing burdens by coordinating such reporting requirements with other schemes already applicable to persons conducting such activity. Monitoring plans should include a description of the survey techniques that would be used to determine the movement and activity of marine mammals near the activity site(s) including migration and other habitat uses, such as feeding. Guidelines for developing a site-specific monitoring plan may be obtained by writing to the Director, Office of Protected Resources; and

(14) Suggested means of learning of, encouraging, and coordinating research opportunities, plans, and activities relating to reducing such incidental taking and evaluating its effects.

(b)(1) The Assistant Administrator shall determine the adequacy and completeness of a request and, if determined to be adequate and complete, will begin the public review process by

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publishing in the FEDERAL REGISTER either:

(i) A proposed incidental harassment authorization; or

(ii) A notice of receipt of a request for the implementation or re-implementation of regulations governing the incidental taking.

(2) Through notice in the FEDERAL REGISTER, newspapers of general circulation, and appropriate electronic media in the coastal areas that may be affected by such activity, NMFS will invite information, suggestions, and comments for a period not to exceed 30 days from the date of publication in the FEDERAL REGISTER. All information and suggestions will be considered by the National Marine Fisheries Service in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization or conditions governing the issuance of an incidental harassment authorization.

(3) Applications that are determined to be incomplete or inappropriate for the type of taking requested, will be returned to the applicant with an explanation of why the application is being returned.

(c) The Assistant Administrator shall evaluate each request to determine, based upon the best available scientific evidence, whether the taking by the specified activity within the specified geographic region will have a negligible impact on the species or stock and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. If the Assistant Administrator finds that the mitigating measures would render the impact of the specified activity negligible when it would not otherwise satisfy that requirement, the Assistant Administrator may make a finding of negligible impact subject to such mitigating measures being successfully implemented. Any preliminary findings of “negligible impact” and “no unmitigable adverse impact” shall be proposed for public comment along with either the proposed incidental harassment authorization or the proposed regulations for the specific activity.

(d) If, subsequent to the public review period, the Assistant Administrator finds that the taking by the specified activity would have more than a negligible impact on the species or stock of marine mammal or would have an unmitigable adverse impact on the availability of such species or stock for subsistence uses, the Assistant Administrator shall publish in the FEDERAL REGISTER the negative finding along with the basis for denying the request.

§ 216.105 Specific regulations.

(a) For all petitions for regulations under this paragraph, applicants must provide the information requested in §216.104(a) on their activity as a whole, which includes, but is not necessarily limited to, an assessment of total impacts by all persons conducting the activity.

(b) For allowed activities that may result in incidental takings of small numbers of marine mammals by harassment, serious injury, death or a combination thereof, specific regulations shall be established for each allowed activity that set forth:

(1) Permissible methods of taking;

(2) Means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(c) Regulations will be established based on the best available information. As new information is developed, through monitoring, reporting, or research, the regulations may be modified, in whole or in part, after notice and opportunity for public review.

§ 216.106 Letter of Authorization.

(a) A Letter of Authorization, which may be issued only to U.S. citizens, is required to conduct activities pursuant to any regulations established under §216.105. Requests for Letters of Authorization shall be submitted to the

Director, Office of Protected Resources. The information to be submitted in a request for an authorization will be specified in the appropriate subpart to this part or may be obtained by writing to the above named person.

(b) Issuance of a Letter of Authorization will be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under the specific regulations.

(c) Letters of Authorization will specify the period of validity and any additional terms and conditions appropriate for the specific request.

(d) Notice of issuance of all Letters of Authorization will be published in the FEDERAL REGISTER within 30 days of issuance.

(e) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The regulations prescribed are not being substantially complied with; or

(2) The taking allowed is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

(f) The requirement for notice and opportunity for public review in §216.106(e) shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the wellbeing of the species or stocks of marine mammals concerned.

(g) A violation of any of the terms and conditions of a Letter of Authorization or of the specific regulations shall subject the Holder and/or any individual who is operating under the authority of the Holder's Letter of Authorization to penalties provided in the MMPA.

§216.107 Incidental harassment authorization for Arctic waters.

(a) Except for activities that have the potential to result in serious injury or mortality, which must be authorized under §216.105, incidental harassment authorizations may be issued, following a 30-day public review period, to

allowed activities that may result in only the incidental harassment of a small number of marine mammals. Each such incidental harassment authorization shall set forth:

(1) Permissible methods of taking by harassment;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting, including requirements for the independent peer-review of proposed monitoring plans where the proposed activity may affect the availability of a species or stock for taking for subsistence uses.

(b) Issuance of an incidental harassment authorization will be based on a determination that the number of marine mammals taken by harassment will be small, will have a negligible impact on the species or stock of marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses.

(c) An incidental harassment authorization will be either issued or denied within 45 days after the close of the public review period.

(d) Notice of issuance or denial of an incidental harassment authorization will be published in the FEDERAL REGISTER within 30 days of issuance of a determination.

(e) Incidental harassment authorizations will be valid for a period of time not to exceed 1 year but may be renewed for additional periods of time not to exceed 1 year for each reauthorization.

(f) An incidental harassment authorization shall be modified, withdrawn, or suspended if, after notice and opportunity for public comment, the Assistant Administrator determines that:

(1) The conditions and requirements prescribed in the authorization are not being substantially complied with; or

(2) The authorized taking, either individually or in combination with other authorizations, is having, or may have, more than a negligible impact on the species or stock or, where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

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(g) The requirement for notice and opportunity for public review in paragraph (f) of this section shall not apply if the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

(h) A violation of any of the terms and conditions of an incidental harassment authorization shall subject the holder and/or any individual who is operating under the authority of the holder's incidental harassment authorization to penalties provided in the MMPA.

§216.108 Requirements for monitoring and reporting under incidental harassment authorizations for Arctic waters.

(a) Holders of an incidental harassment authorization in Arctic waters and their employees, agents, and designees must cooperate with the National Marine Fisheries Service and other designated Federal, state, or local agencies to monitor the impacts of their activity on marine mammals. Unless stated otherwise within an incidental harassment authorization, the holder of an incidental harassment authorization effective in Arctic waters must notify the Alaska Regional Director, National Marine Fisheries Service, of any activities that may involve a take by incidental harassment in Arctic waters at least 14 calendar days prior to commencement of the activity.

(b) Holders of incidental harassment authorizations effective in Arctic waters may be required by their authorization to designate at least one qualified biological observer or another appropriately experienced individual to observe and record the effects of activities on marine mammals. The number of observers required for monitoring the impact of the activity on marine mammals will be specified in the incidental harassment authorization. If observers are required as a condition of the authorization, the observer(s) must be approved in advance by the National Marine Fisheries Service.

(c) The monitoring program must, if appropriate, document the effects (including acoustical) on marine mam-

mals and document or estimate the actual level of take. The requirements for monitoring plans, as specified in the incidental harassment authorization, may vary depending on the activity, the location, and the time.

(d) Where the proposed activity may affect the availability of a species or stock of marine mammal for taking for subsistence purposes, proposed monitoring plans or other research proposals must be independently peer-reviewed prior to issuance of an incidental harassment authorization under this subpart. In order to complete the peer-review process within the time frames mandated by the MMPA for an incidental harassment authorization, a proposed monitoring plan submitted under this paragraph must be submitted to the Assistant Administrator no later than the date of submission of the application for an incidental harassment authorization. Upon receipt of a complete monitoring plan, and at its discretion, the National Marine Fisheries Service will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan. The applicant must submit a final monitoring plan to the Assistant Administrator prior to the issuance of an incidental harassment authorization.

(e) At its discretion, the National Marine Fisheries Service may place an observer aboard vessels, platforms, aircraft, etc., to monitor the impact of activities on marine mammals.

(f)(1) As specified in the incidental harassment authorization, the holder of an incidental harassment authorization for Arctic waters must submit reports to the Assistant Administrator within 90 days of completion of any individual components of the activity (if any), within 90 days of completion of the activity, but no later than 120 days prior to expiration of the incidental harassment authorization, whichever is earlier. This report must include the following information:

(i) Dates and type(s) of activity;

(ii) Dates and location(s) of any activities related to monitoring the effects on marine mammals; and

(iii) Results of the monitoring activities, including an estimate of the actual level and type of take, species name and numbers of each species observed, direction of movement of species, and any observed changes or modifications in behavior.

(2) Monitoring reports will be reviewed by the Assistant Administrator and, if determined to be incomplete or inaccurate, will be returned to the holder of the authorization with an explanation of why the report is being returned. If the authorization holder disagrees with the findings of the Assistant Administrator, the holder may request an independent peer review of the report. Failure to submit a complete and accurate report may result in a delay in processing future authorization requests.

(g) Results of any behavioral, feeding, or population studies, that are conducted supplemental to the monitoring program, should be made available to the National Marine Fisheries Service before applying for an incidental harassment authorization for the following year.

Subpart J [Reserved]

Subpart K—Taking of Marine Mammals Incidental to Space Vehicle and Test Flight Activities

SOURCE: 69 FR 5727, Feb. 6, 2004, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 5727, Feb. 6, 2004, subpart K was added, effective Feb. 6, 2004, through Feb. 6, 2009.

§ 216.120 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in:

(1) Launching up to 30 space and missiles vehicles each year from Vandenberg Air Force Base, for a total of up to 150 missiles and rockets over the 5-year period of these regulations,

(2) Launching up to 20 rockets each year from Vandenberg Air Force Base, for a total of up to 100 rocket launches

over the 5-year period of these regulations,

(3) Aircraft flight test operations, and

(4) Helicopter operations from Vandenberg Air Force Base.

(b) The incidental take of marine mammals on Vandenberg Air Force Base and in waters off southern California, under the activity identified in paragraph (a) of this section, is limited to the following species: Harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), and northern fur seals (*Callorhinus ursinus*).

§ 216.121 Effective dates.

Regulations in this subpart are effective from February 6, 2004, through February 6, 2009.

§ 216.122 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to § 216.106, the 30th Space Wing, U.S. Air Force, its contractors, and clients, may incidentally, but not intentionally, take marine mammals by harassment, within the area described in § 216.120, provided all terms, conditions, and requirements of these regulations and such Letter(s) of Authorization are complied with.

(b) [Reserved]

§ 216.123 Prohibitions.

No person in connection with the activities described in § 216.120 shall:

(a) Take any marine mammal not specified in § 216.120(b);

(b) Take any marine mammal specified in § 216.120(b) other than by incidental, unintentional harassment;

(c) Take a marine mammal specified in § 216.120(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.106.

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§216.124 Mitigation.

(a) The activity identified in §216.120(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.120, the following mitigation measures must be utilized:

(1) All aircraft and helicopter flight paths must maintain a minimum distance of 1,000 ft (305 m) from recognized seal haul-outs and rookeries (*e.g.*, Point Sal, Purisima Point, Rocky Point), except in emergencies or for real-time security incidents (*e.g.*, search-and-rescue, fire-fighting) which may require approaching pinniped rookeries closer than 1,000 ft (305 m).

(2) For missile and rocket launches, holders of Letters of Authorization must avoid, whenever possible, launches during the harbor seal pupping season of March through June, unless constrained by factors including, but not limited to, human safety, national security, or for space vehicle launch trajectory necessary to meet mission objectives.

(3) VAFB must avoid, whenever possible, launches which are predicted to produce a sonic boom on the Northern Channel Islands during harbor seal, elephant seal, and California sea lion pupping seasons, March through June.

(4) If post-launch surveys determine that an injurious or lethal take of a marine mammal has occurred, the launch procedure and the monitoring methods must be reviewed, in cooperation with NMFS, and appropriate changes must be made through modification to a Letter of Authorization, prior to conducting the next launch under that Letter of Authorization.

(5) Additional mitigation measures as contained in a Letter of authorization.

(b) [Reserved]

§216.125 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued pursuant to §216.106 for activities described in §216.120(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. Unless specified

otherwise in the Letter of Authorization, the Holder of the Letter of Authorization must notify the Administrator, Southwest Region, National Marine Fisheries Service, by letter or telephone, at least 2 weeks prior to activities possibly involving the taking of marine mammals.

(b) Holders of Letters of Authorization must designate qualified on-site individuals, approved in advance by the National Marine Fisheries Service, as specified in the Letter of Authorization, to:

(1) Conduct observations on harbor seal, elephant seal, and sea lion activity in the vicinity of the rookery nearest the launch platform or, in the absence of pinnipeds at that location, at another nearby haulout, for at least 72 hours prior to any planned launch occurring during the harbor seal pupping season (1 March through 30 June) and continue for a period of time not less than 48 hours subsequent to launching,

(2) For launches during the harbor seal pupping season (March through June), conduct follow-up surveys within 2 weeks of the launch to ensure that there were no adverse effects on any marine mammals,

(3) Monitor haul-out sites on the Northern Channel Islands, if it is determined by modeling that a sonic boom of greater than 1 psf could occur in those areas (this determination will be made in consultation with the National Marine Fisheries Service),

(4) Investigate the potential for spontaneous abortion, disruption of effective female-neonate bonding, and other reproductive dysfunction,

(5) Supplement observations on Vandenberg and on the Northern Channel Islands with video-recording of mother-pup seal responses for daylight launches during the pupping season,

(6) Conduct acoustic measurements of those launch vehicles that have not had sound pressure level measurements made previously, and

(7) Include multiple surveys each day that record the species, number of animals, general behavior, presence of pups, age class, gender and reaction to launch noise, sonic booms or other natural or human caused disturbances, in addition to recording environmental

conditions such as tide, wind speed, air temperature, and swell.

(c) Holders of Letters of Authorization must conduct additional monitoring as required under an annual Letter of Authorization.

(d) The Holder of the Letter of Authorization must submit a report to the Southwest Administrator, National Marine Fisheries Service within 90 days after each launch. This report must contain the following information:

- (1) Date(s) and time(s) of the launch,
- (2) Design of the monitoring program, and
- (3) Results of the monitoring programs, including, but not necessarily limited to:
 - (i) Numbers of pinnipeds present on the haulout prior to commencement of the launch,
 - (ii) Numbers of pinnipeds that may have been harassed as noted by the number of pinnipeds estimated to have entered the water as a result of launch noise,
 - (iii) The length of time(s) pinnipeds remained off the haulout or rookery,
 - (iv) The numbers of pinniped adults or pups that may have been injured or killed as a result of the launch, and
 - (v) Behavioral modifications by pinnipeds that were likely the result of launch noise or the sonic boom.
- (e) An annual report must be submitted at the time of renewal of the LOA.

(f) A final report must be submitted at least 180 days prior to expiration of these regulations. This report will:

- (1) Summarize the activities undertaken and the results reported in all previous reports,
- (2) Assess the impacts at each of the major rookeries,
- (3) Assess the cumulative impact on pinnipeds and other marine mammals from Vandenberg activities, and
- (4) State the date(s), location(s), and findings of any research activities related to monitoring the effects on launch noise and sonic booms on marine mammal populations.

§216.126 Applications for Letters of Authorization.

(a) To incidentally take harbor seals and other marine mammals pursuant

to these regulations, either the U.S. citizen conducting the activity or the 30th Space Wing on behalf of the U.S. citizen conducting the activity, must apply for and obtain a Letter of Authorization in accordance with §216.106.

(b) The application must be submitted to the National Marine Fisheries Service at least 30 days before the activity is scheduled to begin.

(c) Applications for Letters of Authorization and for renewals of Letters of Authorization must include the following:

- (1) Name of the U.S. citizen requesting the authorization,
- (2) A description of the activity, the dates of the activity, and the specific location of the activity, and
- (3) Plans to monitor the behavior and effects of the activity on marine mammals.
- (d) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of seals and sea lions.

§216.127 Renewal of Letters of Authorization.

A Letter of Authorization issued under §216.126 for the activity identified in §216.120(a) will be renewed annually upon:

- (a) Timely receipt of the reports required under §216.125(d), if determined by the Assistant Administrator to be acceptable; and
- (b) A determination that the mitigation measures required under §216.124 and the Letter of Authorization have been undertaken.

§216.128 Modifications of Letters of Authorization.

(a) In addition to complying with the provisions of §216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to a Letter of Authorization subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.120 (b), a

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Letter of Authorization may be substantively modified without prior notice and opportunity for public comment. A notice will be published in the FEDERAL REGISTER subsequent to the action.

Subparts L–M [Reserved]

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

SOURCE: 68 FR 52138, Sept. 2, 2003, unless otherwise noted.

EFFECTIVE DATE NOTE: At 68 FR 52138, Sept. 2, 2003, Subpart N of Part 216 was added, effective Oct. 2, 2003, through Oct. 2, 2008.

§216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in target missile launch activities at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Vandal (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

§216.152 Effective dates.

Regulations in this subpart are effective from October 2, 2003 through October 2, 2008.

§216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to §216.106, the U.S. Navy may incidentally, but not inten-

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tionally, take those marine mammal species specified in §216.151(b) by Level B harassment, in the course of conducting target missile launch activities within the area described in §216.151(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity specified in §216.151 must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When conducting these activities, the following mitigation measures must be utilized:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February to April), when operationally practicable.

(3) The holder of this Authorization must limit launch activities during other pinniped pupping seasons, when operationally practicable.

(4) The holder of the Letter of Authorization must not launch Vandal target missiles from the Alpha Complex at low elevation (less than 1,000 feet (304.8 m) on launch azimuths that pass close to pinniped haul-out sites).

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring conducted under §216.155, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980–4023 within 48 hours and, in cooperation

with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next missile launch.

§216.154 Prohibitions.

Notwithstanding takings authorized by §216.151(b) and by a Letter of Authorization issued under §216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under §216.106.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be notified immediately of any changes or deletions to any portions of the proposed monitoring plan submitted in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site observer(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying dis-

tances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by observers described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for at least 1 hour immediately following the launch of all launch vehicles.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;

(H) Substratum type;

(I) Substratum slope;

(J) Weather condition;

(K) Horizontal visibility; and

(L) Tide state.

(2) *Acoustic Monitoring.* (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

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(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report on the information required under §216.155(d)(1)(iii) to the National Marine Fisheries Service, Southwest Regional Office, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60-day and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraph (d) of this section, or in the Letter of Authorization issued under §216.106, may

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be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in §216.157.

(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(e) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under §216.106 and §216.156 for the activity specified in §216.151 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under §216.156 will be undertaken and that

there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under §216.155, and acceptance by the National Marine Fisheries Service;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity continues to be small and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.158 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to §216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.151(b), the Letter of Authorization issued pursuant to §216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER subsequent to the action.

Subpart O [Reserved]

Subpart P—Taking of Marine Mammals Incidental to Operating a Low Frequency Acoustic Source by the North Pacific Acoustic Laboratory

SOURCE: 66 FR 43458, Aug. 17, 2001, unless otherwise noted.

EFFECTIVE DATE NOTE: At 66 FR 43458, Aug. 17, 2001, subpart P was added, effective Sept. 17, 2001, to Sept. 17, 2006.

§ 216.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of small numbers of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in conducting acoustic research using a moored, low-frequency acoustic source by the North Pacific Acoustic Laboratory off Kauai, Hawaii.

(b) The incidental harassment of marine mammals under the activity identified in paragraph (a) of this section is limited to small numbers of the following species: humpback whales (*Megaptera novaengliae*), fin whales (*Balaenoptera physalus*), blue whales (*B. musculus*), Bryde's whales (*B. edeni*), minke whales (*B. acutorostrata*), North Pacific right whales (*Balaena japonicus*), sperm whales (*Physeter macrocephalus*), short-finned pilot whales (*Globicephala macrorhynchus*), beaked whales (*Ziphius cavirostris*, *Berardius bairdi*, and *Mesoplodon spp.*), spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), striped dolphins (*Stenella coeruleoalba*), bottlenose dolphins (*Tursiops truncatus*), rough-toothed dolphins (*Steno bredanensis*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), killer whales (*Orcinus orca*), false killer whales (*Pseudorca crassidens*), pygmy killer whales (*Feresa attenuata*), and melon-headed whales (*Peponocephala electra*), and Hawaiian monk seals (*Monachus schauinslandi*).

§ 216.171 Effective dates.

Regulations in this subpart are effective from September 17, 2001, through September 17, 2006.

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§ 216.172 Permissible methods of taking.

(a) Under a Letter of Authorization issued pursuant to §§ 216.106 and 216.176, the Holder of this Letter of Authorization may incidentally, but not intentionally, take any marine mammals by harassment within the area described in § 216.170(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the Letter of Authorization.

(b) The activities identified in § 216.170(a) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

§ 216.173 Prohibitions.

Notwithstanding takings authorized by § 216.170(b) and by a Letter of Authorization issued under §§ 216.106 and 216.176, no person in connection with the activities described in § 216.170(a) shall:

(a) Take any marine mammal not specified in § 216.170(b);

(b) Take any marine mammal specified in § 216.170(b) other than by incidental, unintentional harassment;

(c) Take any marine mammal specified in § 216.170(b) if such take results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.176.

§ 216.174 Mitigation.

As described in the Letter of Authorization issued under §§ 216.106 and 216.176., the North Pacific Acoustic Laboratory acoustic source must:

(a) Operate at the minimum duty cycle necessary for conducting large-scale acoustic thermometry and long-range propagation objectives.

(b) Not increase the duty cycle during the months of January through April.

(c) Operate at the minimum power level necessary for conducting large-scale acoustic thermometry and long-range propagation objectives, but no more than 260 Watts.

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(d) Precede all transmissions from the acoustic source by a 5-minute ramp-up of the acoustic source's power.

§ 216.175 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals. The holder must notify the Southwest Regional Administrator at least 2 weeks prior to commencing monitoring activities.

(b) The Holder of this Authorization must conduct a minimum of eight surveys each year from February through early April in the area off the north shore of Kauai, Hawaii, as specified in the Letter of Authorization issued under §§ 216.106 and 216.176.

(c) The Holder of this Authorization must, through coordination with marine mammal stranding networks in Hawaii, monitor strandings of marine mammals to detect long-term trends in stranding and the potential relationship to the North Pacific Acoustic Laboratory acoustic source.

(d) Activities related to the monitoring described in paragraphs (b) and (c) of this section, or in the Letter of Authorization issued under §§ 216.106 and 216.176 may be conducted without the need for a separate scientific research permit.

(e) In coordination and compliance with marine mammal researchers operating under this subpart, at its discretion, the National Marine Fisheries Service may place an observer on any aircraft involved in marine mammal surveys in order to monitor the impact on marine mammals.

(f) The holder of a Letter of Authorization must annually submit a report to the Director, Office of Protected Resources, National Marine Fisheries Service, no later than 120 days after the conclusion of the humpback whale aerial survey monitoring program. This report must contain all the information required by the Letter of Authorization, including the results, if any, of coordination with coastal marine mammal stranding networks.

(g) A final comprehensive report must be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service no later than 240 days after completion of the final year of humpback whale aerial survey monitoring conducted under § 216.175. This report must contain all the information required by the Letter of Authorization.

§ 216.176 Letter of authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in § 216.177.

(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the number of marine mammals taken by the activity, specified in § 216.170(b), as a whole, will have no more than a negligible impact on the species or stocks of affected marine mammal(s).

(e) Notice of issuance or denial of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.177 Renewal of a letter of authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.176 for the activity identified in § 216.170(a) will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under §

216.176 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.175, which have been reviewed by the National Marine Fisheries Service and determined to be acceptable;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§ 216.174 and 216.175 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) Renewal of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity continues to be small and that the number of marine mammals taken by the activity, specified in § 216.170(b), will have no more than a negligible impact on the species or stock of affected marine mammal(s).

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.178 Modifications to a letter of authorization.

(a) In addition to complying with the provisions of §§ 216.106 and 216.176, except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization issued pursuant to §§ 216.106 and 216.176 and subject to the provisions of this subpart shall be made by the National Marine Fisheries Service until after a notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.177 without modification, except for the period of validity, is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.170(b), a

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Letter of Authorization issued pursuant to §§ 216.106 and 216.176 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

SOURCE: 67 FR 46785, July 16, 2002, unless otherwise noted.

EFFECTIVE DATE NOTE: At 67 FR 46785, July 16, 2002, subpart Q was added, effective Aug. 15, 2002, through Aug. 15, 2007.

§216.180 Specified activity and specified geographical region.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than two SURTASS LFA sonar systems conducting active sonar operations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in §216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in §216.183(d), the incidental taking by harassment may be authorized in the following areas as specified in a Letter of Authorization:

- (1) Atlantic Polar Biome:
 - (i) Boreal Polar Province (1/BPLR)(i.e., LFA sonar 180-dB exclusion zone);
 - (ii) Atlantic Arctic Province (2/ARCT);
 - (iii) Atlantic Subarctic Province (3/SARC);
- (2) North Atlantic Coastal Biome:
 - (i) Northeast Atlantic Shelves Province (11/NECS),

- (A) North/Irish Sea Subprovince,
- (B) English Channel Subprovince,
- (C) Southern Outer Shelf Subprovince,
- (D) Northern Outer Shelf Subprovince, and
- (E) Baltic Subprovince; and
- (ii) Northwest Atlantic Shelves Province (15/NWCS),
 - (A) Newfoundland/Nova Scotia Shelf Subprovince,
 - (B) Gulf of St. Lawrence Coastal Subprovince,
 - (C) Gulf of Maine/Bay of Fundy Coastal Subprovince,
 - (D) Georges Bank/New York Bight Coastal Subprovince,
 - (E) Middle Atlantic Bight Coastal Subprovince,
 - (F) South Atlantic Bight Coastal Subprovince;
- (3) South Atlantic Coastal Biome:
 - (i) Benguela Current Coastal Province (22/BENG);
 - (ii) Brazil Current Coastal Province (20/BRAZ);
 - (iii) Eastern (Canary) Coastal Province (12/CNRY);
 - (iv) Southwest Atlantic Shelves Province (21/FKLD);
 - (v) Guianas Coastal Province (14/GUIA);
 - (vi) Guinea Current Coastal Province (13/GUIN),
 - (A) Guiana Coastal Subprovince, and
 - (B) Central African Coastal Subprovince;
 - (4) Atlantic Westerly Winds Biome:
 - (i) Gulf Stream Province (5/GFST);
 - (ii) North Atlantic Drift Province (4/NADR);
 - (iii) North Atlantic Subtropical Gyral East Province (18/NASTE); and
 - (iv) North Atlantic Subtropical Gyral West Province (6/NASTW);
 - (5) Atlantic Trade Wind Biome:
 - (i) Caribbean Province (17/CARB);
 - (A) Gulf of Mexico Subprovince;
 - (B) Caribbean Sea Subprovince;
 - (ii) Eastern Tropical Atlantic Province (9/ETRA);
 - (iii) North Atlantic Tropical Gyral Province (7/NATR);
 - (iv) South Atlantic Gyral Province (10/SATL);
 - (v) Western Tropical Atlantic Province (8/WTRA);
 - (6) Mediterranean/Black Sea Biome:
 - (i) Mediterranean Sea Province (16A/MEDI);

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- (ii) Black Sea Province (16B/BLSE);
- (7) Indian Ocean Coastal Biome:
 - (i) Australia/Indonesia Coastal Province (37/AUSW);
 - (ii) Eastern India Coastal Province (35/INDE);
 - (iii) Northwestern Arabian Upwelling Province (34/ARAB);
 - (iv) Eastern Africa Coastal Province (32/EAFR);
 - (v) Western India Coastal Province (36/INDW);
 - (vi) Red Sea, Persian Gulf Province (33/REDS);
- (8) Indian Ocean Trade Wind Biome:
 - (i) Indian South Subtropical Gyre Province (31/ISSG);
 - (ii) Indian Monsoon Gyres Province (30/MONS);
- (9) North Pacific Coastal Biome:
 - (i) Alaska Downwelling Coastal Province (65/ALSK),
 - (A) Canadian/Alaskan Coastal Subprovince,
 - (B) Aleutian Stream Coastal Subprovince,
 - (ii) California Current Province (66/CALC),
 - (A) Oregon-British Columbia Coastal Subprovince,
 - (B) Point Conception/Cape Mendicino Coastal Subprovince,
 - (C) Southern California Bight Subprovince, and
 - (D) Baja California Subprovince;
 - (iii) Central American Coastal Province (67/CAMR);
 - (iv) China Sea Coastal Province (69/CHIN);
- (10) South Pacific Coastal Biome:
 - (i) East Australian Coastal Province (71/AUSE);
 - (ii) Humboldt Current Coastal Province (68/HUMB);
 - (A) Chilean Coastal Subprovince and
 - (B) Peruvian Coastal Subprovince;
 - (iii) New Zealand Coastal Province (72/NEWZ);
 - (iv) Sunda/Arafura Shelves Province (70/SUND);
- (11) Pacific Polar Biome:
 - (i) North Pacific Epicontinental Sea Province (50/BERS);
 - (A) Bering Sea Subprovince;
 - (B) Okhotsk Sea Subprovince;
 - (ii) Reserved;
- (12) Pacific Trade Wind Biome:
 - (i) Archipelagic Deep Basins Province (64/ARCH);
 - (ii) North Pacific Tropical Gyre West Province (56/NPTGW);
 - (iii) North Pacific Tropical Gyre East Province (60/NPTGE);
 - (iv) Pacific Equatorial Divergence Province (62/PEQD);
 - (v) North Pacific Equatorial Countercurrent Province (61/PNEC);
 - (vi) South Pacific Subtropical Gyre Province (59/SPGS);
 - (vii) Western Pacific Warm Pool Province (63/WARM);
- (13) Pacific Westerly Winds Biome:
 - (i) Kuroshio Current Province (53/KURO);
 - (ii) North Pacific Transition Zone Province (54/NPPF);
 - (iii) Pacific Subarctic Gyres (East) Province (51/PSAGE);
 - (iv) Pacific Subarctic Gyres (West) Province (52/PSAGW);
- (14) Antarctic Westerly Winds Biome:
 - (i) Subantarctic Water Ring Province (81/SANT),
 - (A) Atlantic Subantarctic Ring Subprovince;
 - (B) Indian Ocean Subantarctic Ring Subprovince;
 - (C) Pacific Ocean Subantarctic Water Ring Subprovince;
 - (ii) Subtropical Convergence Province (80/SSTC),
 - (A) Atlantic South Subtropical Convergence Subprovince;
 - (B) Indian Ocean South Subtropical Convergence Subprovince;
 - (C) Pacific Ocean South Subtropical Convergence Subprovince;
 - (iii) Tasman Sea Province (58/TASM);
- (15) Antarctic Polar Biome: (SURTASS LFA sonar exclusion zone);
 - (i) Antarctic Province (82/ANTA)
 - (ii) Austral Polar Province (83/APLR).
 - (b) The incidental take by Level A and Level B harassment of marine mammals under the activity identified in this section is limited to the following species and species groups:
 - (1) Mysticete whales—blue whale (*Balaenoptera musculus*), fin whale (*Balaenoptera physalus*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), humpback whale (*Megaptera novaeangliae*), northern right whale (*Eubalaena glacialis*), southern right whale (*Eubalaena australis*), pygmy right whale (*Capera*

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marginata), bowhead whale (*Balaena mysticetus*), and gray whales (*Eschrichtius robustus*).

(2) Odontocete whales—Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), right-whale dolphin (*Lissodelphis spp.*), bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), beluga whale (*Delphinapterus leucas*), *Stenella spp.*, *Lagenorhynchus spp.*, *Cephalorhynchus spp.*, melon-headed whale (*Peponocephala spp.*), beaked whales (*Berardius spp.*, *Hyperoodon spp.*, *Mesoplodon spp.*), Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(3) Pinnipeds—harbor seals (*Phoca vitulina*), spotted seals (*P. largha*), ribbon seals (*P. fasciata*), gray seals (*Halichoerus grypus*), hooded seal (*Cystophora cristata*), elephant seals (*Mirounga angustirostris* and *M. leonina*), Hawaiian monk seals (*Monachus schauinslandi*), Mediterranean monk seals (*Monachus monachus*), northern fur seals (*Callorhinus ursinus*); southern fur seals (*Arctocephalus spp.*), Steller sea lions (*Eumetopias jubatus*), California sea lions (*Zalophus californianus*), Australian sea lions (*Neophoca cinerea*), New Zealand sea lions (*Phocarcos hookeri*), and South American sea lions (*Otaria flavescens*).

§216.181 Effective dates.

Regulations in this subpart are effective from August 15, 2002 through August 15, 2007.

§216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not inten-

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tionally, take marine mammals by Level A and Level B harassment within the areas described in §216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals, their habitat, and the availability of marine mammals for subsistence uses.

§216.183 Prohibitions.

Notwithstanding takings authorized by §216.180 and by a Letter of Authorization issued under §§216.106 and 216.188, no person in connection with the activities described in §216.180 shall:

(a) Take any marine mammal not specified in §216.180(b);

(b) Take any marine mammal specified in §216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take any marine mammal by receiving a sound pressure level greater than 180 dB while operating under a Letter of Authorization in any geographic area for which a Letter of Authorization has not been issued;

(d) Take a marine mammal specified in §216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or any Letter of Authorization issued under §§216.106 and 216.188.

§216.184 Mitigation.

The activity identified in §216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in §216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§216.106 and 216.188 must be implemented.

(a) Through monitoring described under §216.185, the Holder of a Letter of

Authorization will ensure, to the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

(b) If a marine mammal is detected within the area subjected to sound pressure levels of 180 dB or greater (safety zone) or within the 1 km (0.5 nm) (buffer) zone extending beyond the 180-dB safety zone, SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the safety and buffer zones; and

(2) There is no further detection of any marine mammal within the safety and buffer zones as determined by the visual and/or passive or active acoustic monitoring described in §216.185.

(c) The high-frequency marine mammal monitoring sonar (HF/M3) described in §216.185 will be ramped-up slowly to operating levels over a period of no less than 5 minutes:

(1) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.

(d) The HF/M3 source will not increase its sound pressure level once a marine mammal is detected; ramp-up may proceed once marine mammals are no longer detected.

(e) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar while under a Letter of Authorization, such that the SURTASS LFA sonar sound field exceeds 180 dB (re 1 µPa(rms)):

(1) At a distance of 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(2) Within any offshore area that has been designated as biologically important for marine mammals under §216.183(f), during the biologically important season for that particular area;

(3) Within the offshore boundaries that extend beyond 12 nm (22 km) of the following National Marine Sanctuaries:

- (i) Monterey Bay,
- (ii) Gulf of the Farallones, and
- (iii) Cordell Bank;

(4) Within 23 nm (37.4 km) during the months of December, January, March, and May of each year in the Olympic Coast National Marine Sanctuary.

(f) The following areas have been designated by NMFS as offshore areas of critical biological importance for marine mammals (by season if appropriate):

Name of area	Location of area	Months of importance
(1) 200-m isobath North American East Coast.	From 28° N. to 50° N. west of 40° W	Year-Round.
(2) Antarctic Convergence Zone	30° E. to 80° E to 45° S. 80° E. to 150° E. to 55° S. 150° E. to 50° W. to 60° S. 50° W to 30° E. to 50° S.	October 1 through March 31.
(3) Costa Rica Dome	Centered at 9° N. and 88° W	Year-Round.
(4) Penguin Bank	Centered at 21° N. and 157°30' W	November 1 through May 1.

§216.185 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§216.106 and 216.188 must:

(1) Conduct visual monitoring from the ship's bridge during all daylight hours;

(2) Use low frequency passive SURTASS LFA sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 sonar to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;

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(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise, or, if marine mammals are exhibiting unusual behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations;

(c) Holders of Letters of Authorization for activities described in §216.180 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization must conduct all monitoring and research required under the Letter of Authorization.

§216.186 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of the vessel during the mission;

(2) Information on sonar transmissions as detailed in the Letter of Authorization; and

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, NMFS, no later than 90 days prior to expiration of a Letter of Authorization. This report must contain all the information required by the Letter of Authorization.

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(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an analysis of new passive technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

§216.187 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in §216.180 must apply for and obtain a Letter of Authorization in accordance with §216.106.

(b) The application for an initial or a renewal of a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the specified geographical region where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each specified geographical region;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage of marine mammal species/stocks potentially affected in each specified geographic region for the 12-month period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with §216.104(b) and, if adequate and

complete, issue a Letter of Authorization.

§ 216.188 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year, but may be renewed annually subject to annual renewal conditions in § 216.189.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of each Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, that the total number of marine mammals taken by the activity specified in § 216.180 as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.189 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.188 for the activity identified in § 216.180 will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.187 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in § 216.187(c), including the planned geographic area(s), and

anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under § 216.185, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.184 and 216.185 and the Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the number of marine mammals taken by the activity continues to be small, that the total number of marine mammals taken by the activity specified in § 216.180, as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 216.188 indicates that a substantial modification to the described work, mitigation or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the list of areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER within 30 days of a determination.

§ 216.190 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 and subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided.

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For purposes of this paragraph, a renewal of a Letter of Authorization under §216.189, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.180(b), a Letter of Authorization issued pursuant to §§216.106 and 216.188 may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

§216.191 Designation of Biologically Important Marine Mammal Areas.

(a) Biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by the public.

(b) In order for the National Marine Fisheries Service to designate offshore areas of biological importance for marine mammals under this rule, proponents must petition NMFS by requesting an area be added to the list of biologically important areas in §216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammals within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for ei-

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ther primary feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration;

(d) If a petition is received without sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an area is biologically important for marine mammals and is not located within a previously designated area, NMFS will propose to add the area to §216.184(f) and provide a public comment period of at least 45 days from the date of publication in the FEDERAL REGISTER.

(2) The National Marine Fisheries Service will publish its final determination in the FEDERAL REGISTER.

PARTS 217–221 [RESERVED]

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

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Sec.

222.101 Purpose and scope of regulations.

222.102 Definitions.

222.103 Federal/state cooperation in the conservation of endangered and threatened species.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

222.201 General requirements.

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222.301 General requirements.

222.302 Procedure for obtaining permits.

222.303 Issuance of permits.

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§216.191

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(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in §216.180(b), a Letter of Authorization issued pursuant to §§216.106 and 216.188 may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

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(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammals within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for ei-

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ther primary feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration;

(d) If a petition is received without sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an area is biologically important for marine mammals and is not located within a previously designated area, NMFS will propose to add the area to §216.184(f) and provide a public comment period of at least 45 days from the date of publication in the FEDERAL REGISTER.

(2) The National Marine Fisheries Service will publish its final determination in the FEDERAL REGISTER.

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- 222.305 Rights of succession and transfer of permits.
- 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.
- 222.307 Permits for incidental taking of species.
- 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.
- 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.
- 222.310 Permit authority for designated agents and employees of specified Federal and state agencies.

AUTHORITY: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

Section 222.403 also issued under 16 U.S.C. 1361 *et seq.*

SOURCE: 64 FR 14054, Mar. 23, 1999, unless otherwise noted.

Subpart A—Introduction and General Provisions

§ 222.101 Purpose and scope of regulations.

(a) The regulations of parts 222, 223, and 224 of this chapter implement the Endangered Species Act (Act), and govern the taking, possession, transportation, sale, purchase, barter, exportation, importation of, and other requirements pertaining to wildlife and plants under the jurisdiction of the Secretary of Commerce and determined to be threatened or endangered pursuant to section 4(a) of the Act. These regulations are implemented by the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce. This part pertains to general provisions and definitions. Specifically, parts 223 and 224 pertain to provisions to threatened species and endangered species, respectively. Part 226 enumerates designated critical habitat for endangered and threatened species. Certain of the endangered and threatened marine species enumerated in §§ 224.102 and 223.102 are included in Appendix I or II to the Convention on International Trade of Endangered Species of Wild Fauna and Flora. The importation, exportation, and re-exportation of such species are subject to additional regulations set forth at 50 CFR part 23, chapter I.

(b) For rules and procedures relating to species determined to be threatened or endangered under the jurisdiction of the Secretary of the Interior, see 50 CFR parts 10 through 17. For rules and procedures relating to the general implementation of the Act jointly by the Departments of the Interior and Commerce and for certain species under the joint jurisdiction of both the Secretaries of the Interior and Commerce, see 50 CFR Chapter IV. Marine mammals listed as endangered or threatened and subject to these regulations may also be subject to additional requirements pursuant to the Marine Mammal Protection Act (for regulations implementing that act, see 50 CFR part 216).

(c) No statute or regulation of any state shall be construed to relieve a person from the restrictions, conditions, and requirements contained in parts 222, 223, and 224 of this chapter. In addition, nothing in parts 222, 223, and 224 of this chapter, including any permit issued pursuant thereto, shall be construed to relieve a person from any other requirements imposed by a statute or regulation of any state or of the United States, including any applicable health, quarantine, agricultural, or customs laws or regulations, or any other National Marine Fisheries Service enforced statutes or regulations.

§ 222.102 Definitions.

Accelerator funnel means a device used to accelerate the flow of water through a shrimp trawl net.

Act means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Adequately covered means, with respect to species listed pursuant to section 4 of the Act, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act for the species covered by the plan and, with respect to unlisted species, that a proposed conservation plan has satisfied the permit issuance criteria under section 10(a)(2)(B) of the Act that would otherwise apply if the unlisted species covered by the plan were actually listed. For the Services to cover a species under a conservation plan, it must be listed on the section 10(a)(1)(B) permit.

Alaska Regional Administrator means the Regional Administrator for the Alaska Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Alaska Regional Administrator should be addressed: Alaska Regional Administrator, F/AK, Alaska Regional Office, National Marine Fisheries Service, NOAA, P.O. Box 21668 Juneau, AK 99802–1668.

Approved turtle excluder device (TED) means a device designed to be installed in a trawl net forward of the cod end for the purpose of excluding sea turtles from the net, as described in 50 CFR 223.207.

Assistant Administrator means the Assistant Administrator for Fisheries of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or his authorized representative. Mail sent to the Assistant Administrator should be addressed: Assistant Administrator for Fisheries, National Marine Fisheries Service, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

Atlantic Area means all waters of the Atlantic Ocean south of 36°33'00.8" N. lat. (the line of the North Carolina/Virginia border) and adjacent seas, other than waters of the Gulf Area, and all waters shoreward thereof (including ports).

Atlantic Shrimp Fishery—Sea Turtle Conservation Area (Atlantic SFSTCA) means the inshore and offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Georgia and South Carolina from the Georgia-Florida border (defined as the line along 30°42'45.6" N. lat.) to the North Carolina-South Carolina border (defined as the line extending in a direction of 135°34'55" from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 078°32'32.6" W. long.).

Authorized officer means:

- (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (2) Any special agent or enforcement officer of the National Marine Fisheries Service;

(3) Any officer designated by the head of a Federal or state agency that has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Bait shrimper means a shrimp trawler that fishes for and retains its shrimp catch alive for the purpose of selling it for use as bait.

Beam trawl means a trawl with a rigid frame surrounding the mouth that is towed from a vessel by means of one or more cables or ropes.

Certificate of exemption means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends or renews any certificate of exemption.

Changed circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and NMFS and that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events).

Commercial activity means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: Provided, however, that it does not include the exhibition of commodities by museums or similar cultural or historical organizations.

Conservation plan means the plan required by section 10(a)(2)(A) of the Act that an applicant must submit when applying for an incidental take permit. Conservation plans also are known as "habitat conservation plans" or "HCPs."

Conserved habitat areas means areas explicitly designated for habitat restoration, acquisition, protection, or other conservation purposes under a conservation plan.

Cooperative Agreement means an agreement between a state(s) and the

National Marine Fisheries Service, NOAA, Department of Commerce, which establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened pursuant to section 6(c)(1) of the Endangered Species Act.

Fishing, or to fish, means:

- (1) The catching, taking, or harvesting of fish or wildlife;
- (2) The attempted catching, taking, or harvesting of fish or wildlife;
- (3) Any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish or wildlife; or
- (4) Any operations on any waters in support of, or in preparation for, any activity described in paragraphs (1) through (3) of this definition.

Footrope means a weighted rope or cable attached to the lower lip (bottom edge) of the mouth of a trawl net along the forward-most webbing.

Footrope length means the distance between the points at which the ends of the footrope are attached to the trawl net, measured along the forward-most webbing.

Foreign commerce includes, among other things, any transaction between persons within one foreign country, or between persons in two or more foreign countries, or between a person within the United States and a person in one or more foreign countries, or between persons within the United States, where the fish or wildlife in question are moving in any country or countries outside the United States.

Four-seam, straight-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing are parallel over the entire length.

Four-seam, tapered-wing trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top panel, a bottom panel, and two side panels of webbing. The upper and lower edges of the side panels of webbing converge toward the rear of the trawl.

Gillnet means a panel of netting, suspended vertically in the water by floats along the top and weights along the

bottom, to entangle fish that attempt to pass through it.

Gulf Area means all waters of the Gulf of Mexico west of 81° W. long. (the line at which the Gulf Area meets the Atlantic Area) and all waters shoreward thereof (including ports).

Gulf Shrimp Fishery-Sea Turtle Conservation Area (Gulf SFSTCA) means the offshore waters extending to 10 nautical miles (18.5 km) offshore along the coast of the States of Texas and Louisiana from the South Pass of the Mississippi River (west of 89°08.5' W. long.) to the U.S.-Mexican border.

Habitat restoration activity means an activity that has the sole objective of restoring natural aquatic or riparian habitat conditions or processes.

Harm in the definition of "take" in the Act means an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering.

Headrope means a rope that is attached to the upper lip (top edge) of the mouth of a trawl net along the forward-most webbing.

Headrope length means the distance between the points at which the ends of the headrope are attached to the trawl net, measured along the forward-most webbing.

Import means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the tariff laws of the United States.

Inshore means marine and tidal waters landward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Northeast Regional Administrator means the Regional Administrator for the Northeast Region of the National

Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northeast Regional Administrator should be addressed: Northeast Regional Administrator, F/NE, Northeast Regional Office, National Marine Fisheries Service, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298.

Northwest Regional Administrator means the Regional Administrator for the Northwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Northwest Regional Administrator should be addressed: Northwest Regional Administrator, F/NW, Northwest Regional Office, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE, Seattle, WA 98115–0070.

Office of Enforcement means the national fisheries enforcement office of the National Marine Fisheries Service. Mail sent to the Office of Enforcement should be addressed: Office of Enforcement, F/EN, National Marine Fisheries Service, NOAA, 8484 Suite 415, Georgia Ave., Silver Spring, MD 20910.

Office of Protected Resources means the national program office of the endangered species and marine mammal programs of the National Marine Fisheries Service. Mail sent to the Office of Protected Resources should be addressed: Office of Protected Resources, F/PR, National Marine Fisheries Service, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

Offshore means marine and tidal waters seaward of the 72 COLREGS demarcation line (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts, 1:80,000 scale) and as described in 33 CFR part 80.

Operating conservation program means those conservation management activities which are expressly agreed upon and described in a Conservation Plan or its Implementing Agreement. These activities are to be undertaken for the affected species when implementing an

approved Conservation Plan, including measures to respond to changed circumstances.

Permit means any document so designated by the National Marine Fisheries Service and signed by an authorized official of the National Marine Fisheries Service, including any document which modifies, amends, extends, or renews any permit.

Person means an individual, corporation, partnership, trust, association, or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal government of any state or political subdivision thereof or of any foreign government.

Possession means the detention and control, or the manual or ideal custody of anything that may be the subject of property, for one's use and enjoyment, either as owner or as the proprietor of a qualified right in it, and either held personally or by another who exercises it in one's place and name. Possession includes the act or state of possessing and that condition of facts under which persons can exercise their power over a corporeal thing at their pleasure to the exclusion of all other persons. Possession includes constructive possession that which means not an actual but an assumed existence one claims to hold by virtue of some title, without having actual custody.

Pound net leader means a long straight net that directs the fish offshore towards the pound, an enclosure that captures the fish. Some pound net leaders are all mesh, while others have stringers and mesh. Stringers are vertical lines in a pound net leader that are spaced a certain distance apart and are not crossed by horizontal lines to form mesh. An offshore pound net leader refers to a leader with the inland end set greater than 10 horizontal feet (3 m) from the mean low water line. A nearshore pound net leader refers to a leader with the inland end set 10 horizontal feet (3 m) or less from the mean low water line.

Pre-Act endangered species part means any sperm whale oil, including derivatives and products thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or any finished

scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

Properly implemented conservation plan means any conservation plan, implementing agreement, or permit whose commitments and provisions have been or are being fully implemented by the permittee.

Pusher-head trawl (chopsticks) means a trawl that is spread by two poles suspended from the bow of the trawler in an inverted "V" configuration.

Resident species means, for purposes of entering into cooperative agreements with any state pursuant to section 6(c) of the Act, a species that exists in the wild in that state during any part of its life.

Right whale means, as used in § 224.103(c), any whale that is a member of the western North Atlantic population of the northern right whale species (*Eubalaena glacialis*).

Roller trawl means a variety of beam trawl that is used, usually by small vessels, for fishing over uneven or vegetated sea bottoms.

Scrimshaw product means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from any bone or tooth of any marine mammal of the order Cetacea. For purposes of this part, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

Secretary means the Secretary of Commerce or an authorized representative.

Shrimp means any species of marine shrimp (Order Crustacea) found in the Atlantic Area or the Gulf Area, including, but not limited to:

- (1) Brown shrimp (*Penaeus aztecus*).
- (2) White shrimp (*Penaeus setiferus*).
- (3) Pink shrimp (*Penaeus duorarum*).
- (4) Rock shrimp (*Sicyonia brevirostris*).
- (5) Royal red shrimp (*Hymenopeneus robustus*).
- (6) Seabob shrimp (*Xiphopeneus kroyeri*).

Shrimp trawler means any vessel that is equipped with one or more trawl nets and that is capable of, or used for, fish-

ing for shrimp, or whose on-board or landed catch of shrimp is more than 1 percent, by weight, of all fish comprising its on-board or landed catch.

Skimmer trawl means a trawl that is fished along the side of the vessel and is held open by a rigid frame and a lead weight. On its outboard side, the trawl is held open by one side of the frame extending downward and, on its inboard side, by a lead weight attached by cable or rope to the bow of the vessel.

Southeast Regional Administrator means the Regional Administrator for the Southeast Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southeast Regional Administrator should be addressed: Southeast Regional Administrator, F/SE, Southeast Regional Office, National Marine Fisheries Service, NOAA, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432.

Southwest Regional Administrator means the Regional Administrator for the Southwest Region of the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, or their authorized representative. Mail sent to the Southwest Regional Administrator should be addressed: Southwest Regional Administrator, F/SW, Southwest Regional Office, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802-4213.

Stretched mesh size means the distance between the centers of the two opposite knots in the same mesh when pulled taut.

Summer flounder means the species *Paralichthys dentatus*.

Summer flounder fishery-sea turtle protection area means all offshore waters, bounded on the north by a line along 37°05' N. lat. (Cape Charles, VA) and bounded on the south by a line extending in a direction of 135°34'55" from true north from the North Carolina-South Carolina land boundary, as marked by the border station on Bird Island at 33°51'07.9" N. lat., 078°32'32.6" W. long. (the North Carolina-South Carolina border).

Summer flounder trawler means any vessel that is equipped with one or more bottom trawl nets and that is capable of, or used for, fishing for flounder or whose on-board or landed catch of flounder is more than 100 lb (45.4 kg).

Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect.

Taper, in reference to the webbing used in trawls, means the angle of a cut used to shape the webbing, expressed as the ratio between the cuts that reduce the width of the webbing by cutting into the panel of webbing through one row of twine (bar cuts) and the cuts that extend the length of the panel of webbing by cutting straight aft through two adjoining rows of twine (point cuts). For example, sequentially cutting through the lengths of twine on opposite sides of a mesh, leaving an uncut edge of twines all lying in the same line, produces a relatively strong taper called “all-bars”; making a sequence of 4-bar cuts followed by 1-point cut produces a more gradual taper called “4 bars to 1 point” or “4b1p”; similarly, making a sequence of 2-bar cuts followed by 1-point cut produces a still more gradual taper called “2b1p”; and making a sequence of cuts straight aft does not reduce the width of the panel and is called a “straight” or “all-points” cut.

Taut means a condition in which there is no slack in the net webbing.

Test net, or *try net*, means a net pulled for brief periods of time just before, or during, deployment of the primary net(s) in order to test for shrimp concentrations or determine fishing conditions (e.g., presence or absence of bottom debris, jellyfish, bycatch, seagrasses, etc.).

Tongue means any piece of webbing along the top, center, leading edge of a trawl, whether lying behind or ahead of the headrope, to which a towing bridle can be attached for purposes of pulling the trawl net and/or adjusting the shape of the trawl.

Transportation means to ship, convey, carry or transport by any means whatever, and deliver or receive for such shipment, conveyance, carriage, or transportation.

Triple-wing trawl means a trawl with a tongue on the top, center, leading edge of the trawl and an additional tongue along the bottom, center, leading edge of the trawl.

Two-seam trawl means a design of shrimp trawl in which the main body of the trawl is formed from a top and a bottom panel of webbing that are directly attached to each other down the sides of the trawl.

Underway with respect to a vessel, means that the vessel is not at anchor, or made fast to the shore, or aground.

Unforeseen circumstances means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and NMFS at the time of the conservation plan’s negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

Vessel means a vehicle used, or capable of being used, as a means of transportation on water which includes every description of watercraft, including nondisplacement craft and seaplanes.

Vessel restricted in her ability to maneuver has the meaning specified for this term at 33 U.S.C. 2003(g).

Wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body or parts thereof.

Wing net (butterfly trawl) means a trawl that is fished along the side of the vessel and that is held open by a four-sided, rigid frame attached to the outrigger of the vessel.

[64 FR 14054, Mar. 23, 1999, as amended at 64 FR 60731, Nov. 8, 1999; 67 FR 13101, Mar. 21, 2002; 67 FR 41203, June 17, 2002; 67 FR 71899, Dec. 3, 2002; 68 FR 8467, Feb. 21, 2003; 68 FR 17562, Apr. 10, 2003; 69 FR 25011, May 5, 2004; 70 FR 1832, Jan. 11, 2005]

§ 222.103 Federal/state cooperation in the conservation of endangered and threatened species.

(a) *Application for and renewal of cooperative agreements.* (1) The Assistant Administrator may enter into a Cooperative Agreement with any state that establishes and maintains an active and adequate program for the conservation of resident species listed as endangered or threatened. In order for a state program to be deemed an adequate and active program, the Assistant Administrator must find, and annually reconfirm that the criteria of either sections 6(c)(1) (A) through (E) or sections 6(c)(1) (i) and (ii) of the Act have been satisfied.

(2) Following receipt of an application by a state for a Cooperative Agreement with a copy of a proposed state program, and a determination by the Assistant Administrator that the state program is adequate and active, the Assistant Administrator shall enter into an Agreement with the state.

(3) The Cooperative Agreement, as well as the Assistant Administrator's finding upon which it is based, must be reconfirmed annually to ensure that it reflects new laws, species lists, rules or regulations, and programs and to demonstrate that it is still adequate and active.

(b) *Allocation and availability of funds.*

(1) The Assistant Administrator shall allocate funds, appropriated for the purpose of carrying out section 6 of the Act, to various states using the following as the basis for the determination:

(i) The international commitments of the United States to protect endangered or threatened species;

(ii) The readiness of a state to proceed with a conservation program consistent with the objectives and purposes of the Act;

(iii) The number of federally listed endangered and threatened species within a state;

(iv) The potential for restoring endangered and threatened species within a state; and

(v) The relative urgency to initiate a program to restore and protect an endangered or threatened species in terms of survival of the species.

(2) Funds allocated to a state are available for obligation during the fiscal year for which they are allocated and until the close of the succeeding fiscal year. Obligation of allocated funds occurs when an award or contract is signed by the Assistant Administrator.

(c) *Financial assistance and payments.*

(1) A state must enter into a Cooperative Agreement before financial assistance is approved by the Assistant Administrator for endangered or threatened species projects. Specifically, the Agreement must contain the actions that are to be taken by the Assistant Administrator and/or by the state, the benefits to listed species expected to be derived from these actions, and the estimated cost of these actions.

(2) Subsequent to such Agreement, the Assistant Administrator may further agree with a state to provide financial assistance in the development and implementation of acceptable projects for the conservation of endangered and threatened species. Documents to provide financial assistance will consist of an application for Federal assistance and an award or a contract. The availability of Federal funds shall be contingent upon the continued existence of the Cooperative Agreement and compliance with all applicable Federal regulations for grant administration and cost accounting principles.

(3)(i) The payment of the Federal share of costs incurred when conducting activities included under a contract or award shall not exceed 75 percent of the program costs as stated in the agreement. However, the Federal share may be increased to 90 percent when two or more states having a common interest in one or more endangered or threatened resident species, the conservation of which may be enhanced by cooperation of such states, jointly enter into an agreement with the Assistant Administrator.

(ii) The state share of program costs may be in the form of cash or in-kind contributions, including real property, subject to applicable Federal regulations.

(4) Payments of funds, including payment of such preliminary costs and expenses as may be incurred in connection with projects, shall not be made unless all necessary or required documents are first submitted to and approved by the Assistant Administrator. Payments shall only be made for expenditures reported and certified by the state agency. Payments shall be made only to the state office or official designated by the state agency and authorized under the laws of the state to receive public funds for the state.

Subpart B—Certificates of Exemption for Pre-Act Endangered Species Parts

§ 222.201 General requirements.

(a) The Assistant Administrator may exempt any pre-Act endangered species part from the prohibitions of sections 9(a)(1)(A), 9(a)(1)(E), or 9(a)(1)(F) of the Act.

(1) No person shall engage in any activities identified in such sections of the Act that involve any pre-Act endangered species part without a valid Certificate of Exemption issued pursuant to this subpart B.

(2) No person may export, deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any pre-Act finished scrimshaw product unless that person has been issued a valid Certificate of Exemption and the product or the raw material for such product was held by such certificate holder on October 13, 1982.

(3) Any person engaged in activities otherwise prohibited under the Act or regulations shall bear the burden of proving that the exemption or certificate is applicable, was granted, and was valid and in force at the time of the otherwise prohibited activity.

(b) Certificates of Exemption issued under this subpart are no longer available to new applicants. However, the Assistant Administrator may renew or modify existing Certificates of Exemptions as authorized by the provisions set forth in this subpart.

(c) Any person granted a Certificate of Exemption, including a renewal,

under this subpart, upon a sale of any exempted pre-Act endangered species part, must provide the purchaser in writing with a description (including full identification number) of the part sold and must inform the purchaser in writing of the purchaser's obligation under paragraph (b) of this section, including the address given in the certificate to which the purchaser's report is to be sent.

(d) Any purchaser of pre-Act endangered species parts included in a valid Certificate of Exemption, unless an ultimate user, within 30 days after the receipt of such parts, must submit a written report to the address given in the certificate. The report must specify the quantity of such parts or products received, the name and address of the seller, a copy of the invoice or other document showing the serial numbers, weight, and descriptions of the parts or products received, the date on which such parts or products were received, and the intended use of such parts by the purchaser. The term "ultimate user", for purposes of this paragraph, means any person who acquired such endangered species part or product for his or her own consumption or for other personal use (including gifts) and not for resale.

§ 222.202 Certificate renewal.

(a) Any person to whom a Certificate of Exemption has been issued by the National Marine Fisheries Service may apply to the Assistant Administrator for renewal of such certificate. Any person holding a valid Certificate of Exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, may apply to the Secretary for one renewal for a period not to exceed 5 years.

(b) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of paragraph (c) of this section. At least 15 days should be allowed for processing. When an application for a renewal has been received and deemed sufficient, the Assistant Administrator shall issue a Certificate of Renewal to the applicant as soon as practicable.

(c) The following information will be used as the basis for determining

whether an application for renewal of a Certificate of Exemption is complete:

(1) Title: Application for Renewal of Certificate of Exemption.

(2) The date of application.

(3) The identity of the applicant, including complete name, original Certificate of Exemption number, current address, and telephone number. If the applicant is a corporation, partnership, or association, set forth the details.

(4) The period of time for which a renewal of the Certificate of Exemption is requested. However, no renewal of Certificate of Exemption, or right claimed thereunder, shall be effective after the close of the 5-year period beginning on the date of the expiration of the previous renewal of the certificate of exemption.

(5)(i) A complete and detailed updated inventory of all pre-Act endangered species parts for which the applicant seeks exemption. Each item on the inventory must be identified by the following information: A unique serial number; the weight of the item to the nearest whole gram; and a detailed description sufficient to permit ready identification of the item. Small lots, not exceeding five pounds (2,270 grams), of scraps or raw material, which may include or consist of one or more whole raw whale teeth, may be identified by a single serial number and total weight. All finished scrimshaw items subsequently made from a given lot of scrap may be identified by the lot serial number plus additional digits to signify the piece number of the individual finished item. Identification numbers will be in the following format: 00-000000-0000. The first two digits will be the last two digits of the appropriate certificate of exemption number; the next six digits, the serial number of the individual piece or lot of scrap or raw material; and the last four digits, where applicable, the piece number of an item made from a lot of scrap or raw material. The serial numbers for each certificate holder's inventory must begin with 000001, and piece numbers, where applicable, must begin with 0001 for each separate lot.

(ii) Identification numbers may be affixed to inventory items by any means, including, but not limited to, etching the number into the item, attaching a

label or tag bearing the number to the item, or sealing the item in a plastic bag, wrapper or other container bearing the number. The number must remain affixed to the item until the item is sold to an ultimate user, as defined in § 222.201(d).

(iii) No renewals will be issued for scrimshaw products in excess of any quantities declared in the original application for a Certificate of Exemption.

(6) A Certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a renewal of my Certificate of Exemption under the Endangered Species Act, as amended, and the Department of Commerce regulations issued thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to the penalties under the Act.

(7) Signature of the applicant.

(d) Upon receipt of an incomplete or improperly executed application for renewal, the applicant shall be notified of the deficiency in the application for renewal. If the application for renewal is not corrected and received by the Assistant Administrator within 30 days following the date of receipt of notification, the application for renewal shall be considered abandoned.

§ 222.203 Modification, amendment, suspension, and revocation of certificates.

(a) When circumstances have changed so that an applicant or certificate holder desires to have any material, term, or condition of the application or certificate modified, the applicant or certificate holder must submit in writing full justification and supporting information in conformance with the provisions of this part.

(b) All certificates are issued subject to the condition that the Assistant Administrator reserves the right to amend the provisions of a Certificate of Exemption for just cause at any time. Such amendments take effect on the date of notification, unless otherwise specified.

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(c) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a condition of the certificate may subject the certificate holder to penalties provided in the Act and to suspension, revocation, or modification of the Certificate of Exemption, as provided in subpart D of 15 CFR part 904.

§ 222.204 Administration of certificates.

(a) The Certificate of Exemption covers the business or activity specified in the Certificate of Exemption at the address described therein. No Certificate of Exemption is required to cover a separate warehouse facility used by the certificate holder solely for storage of pre-Act endangered species parts, if the records required by this subpart are maintained at the address specified in the Certificate of Exemption served by the warehouse or storage facility.

(b) Certificates of Exemption issued under this subpart are not transferable. However, in the event of the lease, sale, or other transfer of the operations or activity authorized by the Certificate of Exemption, the successor is not required to obtain a new Certificate of Exemption prior to commencing such operations or activity. In such case, the successor will be treated as a purchaser and must comply with the record and reporting requirements set forth in § 222.201(d).

(c) The Certificate of Exemption holder must notify the Assistant Administrator, in writing, of any change in address, in trade name of the business, or in activity specified in the certificate. The Assistant Administrator must be notified within 10 days of a change of address, and within 30 days of a change in trade name. The certificate with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended certificate to the person to whom it was issued. A certificate holder who seeks amendment of a certificate may continue all authorized activities while awaiting action by the Assistant Administrator.

(d) A Certificate of Exemption issued under this subpart confers no right or privilege to conduct a business or an activity contrary to state or other law.

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Similarly, compliance with the provisions of any state or other law affords no immunity under any Federal laws or regulations of any other Federal agency.

(e) Any person authorized to enforce the Act may enter the premises of any Certificate of Exemption holder or of any purchaser during business hours, including places of storage, for the purpose of inspecting or of examining any records or documents and any endangered species parts.

(f) The records pertaining to pre-Act endangered species parts prescribed by this subpart shall be in permanent form and shall be retained at the address shown on the Certificate of Exemption or at the principal address of a purchaser in the manner prescribed by this subpart.

(g)(1) Holders of Certificates of Exemption must maintain records of all pre-Act endangered species parts they receive, sell, transfer, distribute or dispose of otherwise. Purchasers of pre-Act endangered species parts, unless ultimate users, as defined in § 222.201(d), must similarly maintain records of all such parts or products they receive.

(2) Such records referred to in paragraph (g)(1) of this section may consist of invoices or other commercial records, which must be filed in an orderly manner separate from other commercial records maintained and be readily available for inspection. Such records must show the name and address of the purchaser, seller, or other transferor; show the type, quantity, and identity of the part or product; show the date of such sale or transfer; and be retained, in accordance with the requirements of this subpart, for a period of not less than 3 years following the date of sale or transfer. Each pre-Act endangered species part will be identified by its number on the updated inventory required to renew a Certificate of Exemption.

(i) Each Certificate of Exemption holder must submit a quarterly report (to the address given in the certificate) containing all record information required by paragraph (g)(2) of this section, on all transfers of pre-Act endangered species parts made in the previous calendar quarter, or such other

record information the Assistant Administrator may specify from time to time.

(ii) Quarterly reports are due on January 15, April 15, July 15, and October 15.

(3) The Assistant Administrator may authorize the record information to be submitted in a manner other than that prescribed in paragraph (g)(2) of this section when the record holder demonstrates that an alternate method of reporting is reasonably necessary and will not hinder the effective administration or enforcement of this subpart.

§ 222.205 Import and export requirements.

(a) Any fish and wildlife subject to the jurisdiction of the National Marine Fisheries Service and is intended for importation into or exportation from the United States, shall not be imported or exported except at a port(s) designated by the Secretary of the Interior. Shellfish and fishery products that are neither endangered nor threatened species and that are imported for purposes of human or animal consumption or taken in waters under the jurisdiction of the United States or on the high seas for recreational purposes are excluded from this requirement. The Secretary of the Interior may permit the importation or exportation at non-designated ports in the interest of the health or safety of the species for other reasons if the Secretary deems it appropriate and consistent with the purpose of facilitating enforcement of the Act and reducing the costs thereof. Importers and exporters are advised to see 50 CFR part 14 for importation and exportation requirements and information.

(b) No pre-Act endangered species part shall be imported into the United States. A Certificate of Exemption issued in accordance with the provisions of this subpart confers no right or privilege to import into the United States any such part.

(c)(1) Any person exporting from the United States any pre-Act endangered species part must possess a valid Certificate of Exemption issued in accordance with the provisions of this subpart. In addition, the exporter must provide to the Assistant Adminis-

trator, in writing, not less than 10 days prior to shipment, the following information: The name and address of the foreign consignee, the intended port of exportation, and a complete description of the parts to be exported. No shipment may be made until these requirements are met by the exporter.

(2) The exporter must send a copy of the Certificate of Exemption, and any endorsements thereto, to the District Director of Customs at the port of exportation, which must precede or accompany the shipment in order to permit the appropriate inspection prior to lading. Upon receipt, the District Director may order such inspection, as deemed necessary; the District will clear the merchandise for export, prior to the lading of the merchandise. If they are satisfied that the shipment is proper and complies with the information contained in the certificate and any endorsement thereto. The certificate, and any endorsements, will be forwarded to the Chief of the Office of Enforcement for NMFS.

(3) No pre-Act endangered species part in compliance with the requirements of this subpart may be exported except at a port or ports designated by the Secretary of the Interior, pursuant to § 222.103.

(4) Notwithstanding any provision of this subpart, it shall not be required that the Assistant Administrator authorizes the transportation in interstate or foreign commerce of pre-Act endangered species parts.

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of § 222.205, paragraphs (c)(1) and (2), which contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart C—General Permit Procedures

§ 222.301 General requirements.

(a)(1) The regulations in this subpart C provide uniform rules and procedures for application, issuance, renewal, conditions, and general administration of permits issuable pursuant to parts 222, 223, and 224 of this chapter. While this

section provides generic rules and procedures applicable to all permits, other sections may provide more specific rules and procedures with respect to certain types of permits. In such cases, the requirements in all applicable sections must be satisfied.

(2) Notwithstanding paragraph (a)(1) of this section, the Assistant Administrator may approve variations from the requirements of parts 222, 223, and 224 of this chapter when the Assistant Administrator finds that an emergency exists and that the proposed variations will not hinder effective administration of those parts and will not be unlawful. Other sections within parts 222, 223, and 224 of this chapter may allow for a waiver or variation of specific requirements for emergency situations, upon certain conditions. In such cases, those conditions must be satisfied in order for the waiver or variation to be lawful.

(b) No person shall take, import, export or engage in any other prohibited activity involving any species of fish or wildlife under the jurisdiction of the Secretary of Commerce that has been determined to be endangered under the Act, or that has been determined to be threatened and for which the prohibitions of section 9(a)(1) of the Act have been applied by regulation, without a valid permit issued pursuant to these regulations. The permit shall entitle the person to whom it is issued to engage in the activity specified in the permit, subject to the limitations of the Act and the regulations in parts 222, 223, and 224 of this chapter, for the period stated on the permit, unless sooner modified, suspended or revoked.

(c) Each person intending to engage in an activity for which a permit is required by parts 222, 223, and 224 of this chapter or by the Act shall, before commencing such activity, obtain a valid permit authorizing such activity. Any person who desires to obtain permit privileges authorized by parts 222, 223, and 224 of this chapter must apply for such permit in accordance with the requirements of these sections. If the information required for each specific, permitted activity is included, one application may be accepted for all permits required, and a single permit may be issued.

(d)(1) Any permit issued under these regulations must be in the possession of the person to whom it is issued (or of an agent of such person) while any animal subject to the permit is in the possession of such person or agent. Specifically, a person or his/her agent must be in possession of a permit during the time of the authorized taking, importation, exportation, or of any other act and during the period of any transit incident to such taking, importation, exportation, or to any other act.

(2) A duplicate copy of the issued permit must be physically attached to the tank, container, package, enclosure, or other means of containment, in which the animal is placed for purposes of storage, transit, supervision, or care.

(e) The authorizations on the face of a permit setting forth specific times, dates, places, methods of taking, numbers and kinds of fish or wildlife, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

(f) Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid.

(g) Any permit issued under parts 222, 223, and 224 of this chapter shall be displayed for inspection, upon request, to an authorized officer, or to any other person relying upon its existence.

(h) Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of parts 222, 223, or 224 of this chapter or the provisions of the permit set forth other reporting requirements.

(i) From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of fish or wildlife pursuant to such permit. Such records shall be

kept current and shall include the names and addresses of persons with whom any fish or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records, unless otherwise specified, shall be entered in books, legibly written in the English language. Such records shall be retained for 5 years from the date of issuance of the permit.

(j) Any person holding a permit pursuant to parts 222, 223, and 224 of this chapter shall allow the Assistant Administrator to enter the permit holder's premises at any reasonable hour to inspect any fish or wildlife held or to inspect, audit, or copy any permits, books, or records required to be kept by these regulations or by the Act. Such person shall display any permit issued pursuant to these regulations or to the Act upon request by an authorized officer or by any other person relying on its existence.

§ 222.302 Procedure for obtaining permits.

(a) Applications must be submitted to the Assistant Administrator, by letter containing all necessary information, attachments, certification, and signature, as specified by the regulations in parts 222, 223, and 224 of this chapter, or by the Act. In no case, other than for emergencies pursuant to § 222.301(a)(2), will applications be accepted either orally or by telephone.

(b) Applications must be received by the Assistant Administrator at least 90 calendar days prior to the date on which the applicant desires to have the permit made effective, unless otherwise specified in the regulations or guidelines pertaining to a particular permit. The National Marine Fisheries Service will attempt to process applications deemed sufficient in the shortest possible time, but does not guarantee that the permit will be issued 90 days after notice of receipt of the application is published in the FEDERAL REGISTER.

(c)(1) Upon receipt of an insufficiently or improperly executed application, the applicant shall be notified of the deficiency in the application. If the applicant fails to supply the deficient

information or otherwise fails to correct the deficiency within 60 days following the date of notification, the application shall be considered abandoned.

(2) The sufficiency of the application shall be determined by the Assistant Administrator in accordance with the requirements of this part. The Assistant Administrator, however, may waive any requirement for information or require any elaboration or further information deemed necessary.

§ 222.303 Issuance of permits.

(a)(1) No permit may be issued prior to the receipt of a written application unless an emergency pursuant to § 222.301(a)(2) exists, and a written variation from the requirements is recorded by the National Marine Fisheries Service.

(2) No representation of an employee or agent of the United States shall be construed as a permit unless it meets the requirements of a permit defined in § 222.102.

(3) Each permit shall bear a serial number. Upon renewal, such a number may be reassigned to the permittee to whom issued so long as the permittee maintains continuity of renewal.

(b) When an application for a permit received by the Assistant Administrator is deemed sufficient, the Assistant Administrator shall, as soon as practicable, publish a notice in the FEDERAL REGISTER. Information received by the Assistant Administrator as a part of the application shall be available to the public as a matter of public record at every stage of the proceeding. An interested party, within 30 days after the date of publication of such notice, may submit to the Assistant Administrator written data, views, or arguments with respect to the taking, importation, or to other action proposed in the application, and may request a hearing in connection with the action to be taken thereon.

(c) If a request for a hearing is made within the 30-day period referred to in paragraph (b) of this section, or if the Assistant Administrator determines that a hearing would otherwise be advisable, the Assistant Administrator may, within 60 days after the date of publication of the notice referred to in

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paragraph (b) of this section, afford to such requesting party or parties an opportunity for a hearing. Such hearing shall also be open to participation by any interested members of the public. Notice of the date, time, and place of such hearing shall be published in the FEDERAL REGISTER not less than 15 days in advance of such hearing. Any interested person may appear at the hearing in person or through a representative and may submit any relevant material, data, views, comments, arguments, or exhibits. A summary record of the hearing shall be kept.

(d) Except as provided in subpart D to 15 CFR part 904, as soon as practicable but not later than 30 days after the close of the hearing. If no hearing is held, as soon as practicable but not later than 30 days from the publication of the notice in the FEDERAL REGISTER, the Assistant Administrator shall issue or deny issuance of the permit. Notice of the decision of the Assistant Administrator shall be published in the FEDERAL REGISTER within 10 days after the date of the issuance or denial and indicate where copies of the permit, if issued, may be obtained.

(e)(1) The Assistant Administrator shall issue the permit unless:

(i) Denial of the permit has been made pursuant to subpart D to 15 CFR part 904;

(ii) The applicant has failed to disclose material or information required, or has made false statements as to any material fact, in connection with the application;

(iii) The applicant has failed to demonstrate a valid justification for the permit or a showing of responsibility;

(iv) The authorization requested potentially threatens a fish or wildlife population; or

(v) The Assistant Administrator finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(2) The applicant shall be notified in writing of the denial of any permit request, and the reasons thereof. If authorized in the notice of denial, the applicant may submit further information or reasons why the permit should not be denied. Such further information shall not be considered a new application. The final action by the As-

sistant Administrator shall be considered the final administrative decision of the Department of Commerce.

(f) If a permit is issued under § 222.308, the Assistant Administrator shall publish notice thereof in the FEDERAL REGISTER, including the Assistant Administrator's finding that such permit—

(1) Was applied for in good faith;

(2) Will not operate to the disadvantage of such endangered species; and

(3) Will be consistent with the purposes and policy set forth in section 2 of the Act.

(g) The Assistant Administrator may waive the 30-day period in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published by the Assistant Administrator in the FEDERAL REGISTER within 10 days following the issuance of the permit.

§ 222.304 Renewal of permits.

When the permit is renewable and a permittee intends to continue the activity described in the permit during any portion of the year ensuing its expiration, the permittee shall, unless otherwise notified in writing by the Assistant Administrator, file a request for permit renewal, together with a certified statement, verifying that the information in the original application is still currently correct. If the information is incorrect the permittee shall file a statement of all changes in the original application, accompanied by any required fee at least 30 days prior to the expiration of the permit. Any person holding a valid renewable permit, who has complied with the foregoing provision of this section, may continue such activities as were authorized by the expired permit until the renewal application is acted upon.

§ 222.305 Rights of succession and transfer of permits.

(a)(1) Except as otherwise provided in this section, permits issued pursuant to parts 222, 223, and 224 of this chapter are not transferable or assignable. In the event that a permit authorizes certain business activities in connection

with a business or commercial enterprise, which is then subject to any subsequent lease, sale or transfer, the successor to that enterprise must obtain a permit prior to continuing the permitted activity, with the exceptions provided in paragraphs (a)(2) and (a)(3) of this section.

(2) Certain persons, other than the permittee, are granted the right to carry on a permitted activity for the remainder of the term of a current permit, provided that they furnish the permit to the issuing officer for endorsement within 90 days from the date the successor begins to carry on the activity. Such persons are the following:

(i) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee, and

(ii) The receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(3) Incidental take permits issued under § 222.307, and enhancement permits issued under § 222.308, as part of a Safe Harbor Agreement with Assurances or Candidate Conservation Agreement with Assurances, may be transferred in whole or in part through a joint submission by the permittee and the proposed transferee, or in the case of a deceased permittee, the deceased permittee's legal representative and the proposed transferee, provided NMFS determines in writing that:

(i) The proposed transferee meets all of the qualifications under parts 222, 223, or 224 (as applicable) for holding a permit;

(ii) The proposed transferee has provided adequate written assurances that it will provide sufficient funding for the conservation plan or other agreement or plan associated with the permit and will implement the relevant terms and conditions of the permit, including any outstanding minimization and mitigation requirements; and

(iii) The proposed transferee has provided such other information as NMFS determines is relevant to process the transfer.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes

authorized by the permit, may carry out the activity authorized by the permit.

EFFECTIVE DATE NOTE: At 64 FR 14054, Mar. 23, 1999, part 222 was revised, effective Mar. 23, 1999, with the exception of § 222.305, paragraph (a), which contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

[64 FR 14054, Mar. 23, 1999, as amended at 67 FR 57973, Sept. 13, 2002]

§ 222.306 Modification, amendment, suspension, cancellation, and revocation of permits.

(a) When circumstances have changed so that an applicant or a permittee desires to have any term or condition of the application or permit modified, the applicant or permittee must submit in writing full justification and supporting information in conformance with the provisions of this part and the part under which the permit has been issued or requested. Such applications for modification are subject to the same issuance criteria as original applications.

(b) Notwithstanding the requirements of paragraph (a) of this section, a permittee may change the mailing address or trade name under which business is conducted without obtaining a new permit or being subject to the same issuance criteria as original permits. The permittee must notify the Assistant Administrator, in writing within 30 days, of any change in address or of any change in the trade name for the business or activity specified in the permit. The permit with the change of address or in trade name must be endorsed by the Assistant Administrator, who shall provide an amended permit to the person to whom it was issued.

(c) All permits are issued subject to the condition that the National Marine Fisheries Service reserves the right to amend the provisions of a permit for just cause at any time during its term. Such amendments take effect on the date of notification, unless otherwise specified.

(d) When any permittee discontinues the permitted activity, the permittee shall, within 30 days thereof, mail the

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permit and a request for cancellation to the issuing officer, and the permit shall be deemed void upon receipt. No refund of any part of an amount paid as a permit fee shall be made when the operations of the permittee are, for any reason, discontinued during the tenure of an issued permit.

(e) Any violation of the applicable provisions of parts 222, 223, or 224 of this chapter, or of the Act, or of a term or condition of the permit may subject the permittee to both the penalties provided in the Act and suspension, revocation, or amendment of the permit, as provided in subpart D to 15 CFR part 904.

§ 222.307 Permits for incidental taking of species.

(a) *Scope.* (1) The Assistant Administrator may issue permits to take endangered and threatened species incidentally to an otherwise lawful activity under section 10(a)(1)(B) of the Act. The regulations in this section apply to all endangered species, and those threatened species for which the prohibitions of section 9(a)(1) of the Act, under the jurisdiction of the Secretary of Commerce, apply.

(2) If the applicant represents an individual or a single entity, such as a corporation, the Assistant Administrator will issue an individual incidental take permit. If the applicant represents a group or organization whose members conduct the same or a similar activity in the same geographical area with similar impacts on listed species for which a permit is required, the Assistant Administrator will issue a general incidental take permit. To be covered by a general incidental take permit, each individual conducting the activity must have a certificate of inclusion issued under paragraph (f) of this section.

(b) *Permit application procedures.* Applications should be sent to the Assistant Administrator. The Assistant Administrator shall determine the sufficiency of the application in accordance with the requirements of this section. At least 120 days should be allowed for processing. Each application must be signed and dated and must include the following:

(1) The type of application, either:

(i) Application for an Individual Incidental Take Permit under the Act; or

(ii) Application for a General Incidental Take Permit under the Act;

(2) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity or is representing a group or an organization, the applicable details;

(3) The species or stocks, by common and scientific name, and a description of the status, distribution, seasonal distribution, habitat needs, feeding habits and other biological requirements of the affected species or stocks;

(4) A detailed description of the proposed activity, including the anticipated dates, duration, and specific location. If the request is for a general incidental take permit, an estimate of the total level of activity expected to be conducted;

(5) A conservation plan, based on the best scientific and commercial data available, which specifies the following:

(i) The anticipated impact (i.e., amount, extent, and type of anticipated taking) of the proposed activity on the species or stocks;

(ii) The anticipated impact of the proposed activity on the habitat of the species or stocks and the likelihood of restoration of the affected habitat;

(iii) The steps (specialized equipment, methods of conducting activities, or other means) that will be taken to monitor, minimize, and mitigate such impacts, and the funding available to implement such measures;

(iv) The alternative actions to such taking that were considered and the reasons why those alternatives are not being used; and

(v) A list of all sources of data used in preparation of the plan, including reference reports, environmental assessments and impact statements, and personal communications with recognized experts on the species or activity who may have access to data not published in current literature.

(c) *Issuance criteria.* (1) In determining whether to issue a permit, the Assistant Administrator will consider the following:

(i) The status of the affected species or stocks;

(ii) The potential severity of direct, indirect, and cumulative impacts on the species or stocks and habitat as a result of the proposed activity;

(iii) The availability of effective monitoring techniques;

(iv) The use of the best available technology for minimizing or mitigating impacts; and

(v) The views of the public, scientists, and other interested parties knowledgeable of the species or stocks or other matters related to the application.

(2) To issue the permit, the Assistant Administrator must find that—

(i) The taking will be incidental;

(ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;

(iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;

(iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and

(v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

(d) *Permit conditions.* In addition to the general conditions set forth in this part, every permit issued under this section will contain such terms and conditions as the Assistant Administrator deems necessary and appropriate, including, but not limited to the following:

(1) Reporting requirements or rights of inspection for determining whether the terms and conditions are being complied with;

(2) The species and number of animals covered;

(3) The authorized method of taking;

(4) The procedures to be used to handle or dispose of any animals taken; and

(5) The payment of an adequate fee to the National Marine Fisheries Service to process the application.

(e) *Duration of permits.* The duration of permits issued under this section will be such as to provide adequate as-

surances to the permit holder to commit funding necessary for the activities authorized by the permit, including conservation activities. In determining the duration of a permit, the Assistant Administrator will consider the duration of the proposed activities, as well as the possible positive and negative effects on listed species associated with issuing a permit of the proposed duration, including the extent to which the conservation plan is likely to enhance the habitat of the endangered species or to increase the long-term survivability of the species.

(f) *Certificates of inclusion.* (1) Any individual who wishes to conduct an activity covered by a general incidental take permit must apply to the Assistant Administrator for a Certificate of Inclusion. Each application must be signed and dated and must include the following:

(i) The general incidental take permit under which the applicant wants coverage;

(ii) The name, address, and telephone number of the applicant. If the applicant is a partnership or a corporate entity, the applicable details;

(iii) A description of the activity the applicant seeks to have covered under the general incidental take permit, including the anticipated dates, duration, and specific location; and

(iv) A signed certification that the applicant has read and understands the general incidental take permit and the conservation plan, will comply with their terms and conditions, and will fund and implement applicable measures of the conservation plan.

(2) To issue a Certificate of Inclusion, the Assistant Administrator must find that:

(i) The applicant will be engaged in the activity covered by the general permit, and

(ii) The applicant has made adequate assurances that the applicable measures of the conservation plan will be funded and implemented.

(g) *Assurances provided to permittee in case of changed or unforeseen circumstances.* The assurances in this paragraph (g) apply only to incidental take permits issued in accordance with paragraph (c) of this section where the

conservation plan is being properly implemented, and apply only with respect to species adequately covered by the conservation plan. These assurances cannot be provided to Federal agencies. This rule does not apply to incidental take permits issued prior to March 25, 1998. The assurances provided in incidental take permits issued prior to March 25, 1998, remain in effect, and those permits will not be revised as a result of this rulemaking.

(1) *Changed circumstances provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and were provided for in the plan's operating conservation program, the permittee will implement the measures specified in the plan.

(2) *Changed circumstances not provided for in the plan.* If additional conservation and mitigation measures are deemed necessary to respond to changed circumstances and such measures were not provided for in the plan's operating conservation program, NMFS will not require any conservation and mitigation measures in addition to those provided for in the plan without the consent of the permittee, provided the plan is being properly implemented.

(3) *Unforeseen circumstances.* (i) In negotiating unforeseen circumstances, NMFS will not require the commitment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon for the species covered by the conservation plan without the consent of the permittee.

(ii) If additional conservation and mitigation measures are deemed necessary to respond to unforeseen circumstances, NMFS may require additional measures of the permittee where the conservation plan is being properly implemented. However, such additional measures are limited to modifications within any conserved habitat areas or to the conservation plan's operating conservation program for the affected species. The original terms of the conservation plan will be maintained to the maximum extent possible. Additional conservation and mitigation measures will not involve the commit-

ment of additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources otherwise available for development or use under the original terms of the conservation plan without the consent of the permittee.

(iii) NMFS has the burden of demonstrating that unforeseen circumstances exist, using the best scientific and commercial data available. These findings must be clearly documented and based upon reliable technical information regarding the status and habitat requirements of the affected species. NMFS will consider, but not be limited to, the following factors:

(A) Size of the current range of the affected species;

(B) Percentage of range adversely affected by the conservation plan;

(C) Percentage of range conserved by the conservation plan;

(D) Ecological significance of that portion of the range affected by the conservation plan;

(E) Level of knowledge about the affected species and the degree of specificity of the species' conservation program under the conservation plan; and

(F) Whether failure to adopt additional conservation measures would appreciably reduce the likelihood of survival and recovery of the affected species in the wild.

(h) Nothing in this rule will be construed to limit or constrain the Assistant Administrator, any Federal, State, local, or Tribal government agency, or a private entity, from taking additional actions at his or her own expense to protect or conserve a species included in a conservation plan.

§ 222.308 Permits for scientific purposes or for the enhancement of propagation or survival of species.

(a) *Scope.* The Assistant Administrator may issue permits for scientific purposes or for the enhancement of the propagation or survival of the affected endangered or threatened species in accordance with the regulations in parts 222, 223, and 224 of this chapter and under such terms and conditions as the

Assistant Administrator may prescribe, authorizing the taking, importation, or other acts otherwise prohibited by section 9 of the Act. Within the jurisdiction of a State, more restrictive state laws or regulations in regard to endangered species shall prevail in regard to taking. Proof of compliance with applicable state laws will be required before a permit will be issued.

(b) *Application procedures.* Any person desiring to obtain such a permit may make application therefor to the Assistant Administrator. Permits for marine mammals shall be issued in accordance with the provisions of part 216, subpart D of this chapter. Permits relating to sea turtles may involve the Fish and Wildlife Service, in which case the applicant shall follow the procedures set out in §222.309. The following information will be used as the basis for determining whether an application is complete and whether a permit for scientific purposes or for enhancement of propagation or survival of the affected species should be issued by the Assistant Administrator. An application for a permit shall provide the following information and such other information that the Assistant Administrator may require:

(1) Title, as applicable, either—

- (i) Application for permit for scientific purposes under the Act; or
- (ii) Application for permit for the enhancement of the propagation or survival of the endangered species Under the Act.

(2) The date of the application.

(3) The identity of the applicant including complete name, address, and telephone number. If the applicant is a partnership or a corporate entity, set forth the details. If the endangered species is to be utilized by a person other than the applicant, set forth the name of that person and such other information as would be required if such person were an applicant.

(4) A description of the purpose of the proposed acts, including the following:

- (i) A detailed justification of the need for the endangered species, including a discussion of possible alternatives, whether or not under the control of the applicant; and
- (ii) A detailed description of how the species will be used.

(5) A detailed description of the project, or program, in which the endangered species is to be used, including the following:

- (i) The period of time over which the project or program will be conducted;
- (ii) A list of the names and addresses of the sponsors or cooperating institutions and the scientists involved;
- (iii) A copy of the formal research proposal or contract if one has been prepared;
- (iv) A statement of whether the proposed project or program has broader significance than the individual researcher's goals. For example, does the proposed project or program respond directly or indirectly to recommendation of any national or international scientific body charged with research or management of the endangered species? If so, how?; and
- (v) A description of the arrangements, if any, for the disposition of any dead specimen or its skeleton or other remains in a museum or other institutional collection for the continued benefit to science.

(6) A description of the endangered species which is the subject of the application, including the following:

- (i) A list of each species and the number of each, including the common and scientific name, the subspecies (if applicable), population group, and range;
- (ii) A physical description of each animal, including the age, size, and sex;
- (iii) A list of the probable dates of capture or other taking, importation, exportation, and other acts which require a permit for each animal and the location of capture or other taking, importation, exportation, and other acts which require a permit, as specifically as possible;
- (iv) A description of the status of the stock of each species related insofar as possible to the location or area of taking;
- (v) A description of the manner of taking for each animal, including the gear to be used;
- (vi) The name and qualifications of the persons or entity which will capture or otherwise take the animals; and
- (vii) If the capture or other taking is to be done by a contractor, a statement

as to whether a qualified member of your staff (include name(s) and qualifications) will supervise or observe the capture or other taking. Accompanying such statement shall be a copy of the proposed contract or a letter from the contractor indicating agreement to capture or otherwise take the animals, should a permit be granted.

(7) A description of the manner of transportation for any live animal taken, imported, exported, or shipped in interstate commerce, including the following:

- (i) Mode of transportation;
- (ii) Name of transportation company;
- (iii) Length of time in transit for the transfer of the animal(s) from the capture site to the holding facility;
- (iv) Length of time in transit for any planned future move or transfer of the animals;
- (v) The qualifications of the common carrier or agent used for transportation of the animals;
- (vi) A description of the pen, tank, container, cage, cradle, or other devices used to hold the animal at both the capture site and during transportation;
- (vii) Special care before and during transportation, such as salves, antibiotics, moisture; and
- (viii) A statement as to whether the animals will be accompanied by a veterinarian or by another similarly qualified person, and the qualifications of such person.

(8) Describe the contemplated care and maintenance of any live animals sought, including a complete description of the facilities where any such animals will be maintained including:

- (i) The dimensions of the pools or other holding facilities and the number, sex, and age of animals by species to be held in each;
- (ii) The water supply, amount, and quality;
- (iii) The diet, amount and type, for all animals;
- (iv) Sanitation practices used;
- (v) Qualifications and experience of the staff;
- (vi) A written certification from a licensed veterinarian or from a recognized expert who are knowledgeable on the species (or related species) or group covered in the application. The certifi-

cate shall verify that the veterinarian has personally reviewed the amendments for transporting and maintaining the animal(s) and that, in the veterinarian's opinion, they are adequate to provide for the well-being of the animal; and

(vii) The availability in the future of a consulting expert or veterinarian meeting paragraph requirements of (b)(8)(vi) in this section.

(9) A statement of willingness to participate in a cooperative breeding program and maintain or contribute data to a stud book.

(10) A statement of how the applicant's proposed project or program will enhance or benefit the wild population.

(11) For the 5 years preceding the date of application, the applicant shall provide a detailed description of all mortalities involving species under the control of or utilized by the applicant and are either presently listed as endangered species or are taxonomically related within the Order to the species which is the subject of this application, including:

(i) A list of all endangered species and related species that are the subject of this application that have been captured, transported, maintained, or utilized by the applicant for scientific purposes or for the enhancement of propagation or survival of the affected species, and/or of related species that are captured, transported, maintained, or utilized by the applicant for scientific purposes or for enhancement of propagation or survival of the affected species;

(ii) The numbers of mortalities among such animals by species, by date, by location of capture, i.e., from which population, and the location of such mortalities;

(iii) The cause(s) of any such mortality; and

(iv) The steps which have been taken by applicant to avoid or decrease any such mortality.

(12) A certification in the following language: I hereby certify that the foregoing information is complete, true, and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining a permit under the Endangered Species Act, as

amended, and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Act.

(13) The applicant and/or an officer thereof must sign the application.

(14) Assistance in completing this application may be obtained by writing Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or calling the Office of Protected Resources at 301-713-1401. Allow at least 90 days for processing.

(c) *Issuance criteria.* In determining whether to issue a permit for scientific purposes or to enhance the propagation or survival of the affected endangered species, the Assistant Administrator shall specifically consider, among other application criteria, the following:

(1) Whether the permit was applied for in good faith;

(2) Whether the permit, if granted and exercised, will not operate to the disadvantage of the endangered species;

(3) Whether the permit would be consistent with the purposes and policy set forth in section 2 of the Act;

(4) Whether the permit would further a bona fide and necessary or desirable scientific purpose or enhance the propagation or survival of the endangered species, taking into account the benefits anticipated to be derived on behalf of the endangered species;

(5) The status of the population of the requested species and the effect of the proposed action on the population, both direct and indirect;

(6) If a live animal is to be taken, transported, or held in captivity, the applicant's qualifications for the proper care and maintenance of the species and the adequacy of the applicant's facilities;

(7) Whether alternative non-endangered species or population stocks can and should be used;

(8) Whether the animal was born in captivity or was (or will be) taken from the wild;

(9) Provision for disposition of the species if and when the applicant's project or program terminates;

(10) How the applicant's needs, program, and facilities compare and relate to proposed and ongoing projects and programs;

(11) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application; and

(12) Opinions or views of scientists or other persons or organizations knowledgeable about the species which is the subject of the application or of other matters germane to the application.

(d) *Terms and conditions.* Permits applied for under this section shall contain terms and conditions as the Assistant Administrator may deem appropriate, including but not limited to the following:

(1) The number and kind of species covered;

(2) The location and manner of taking;

(3) Port of entry or export;

(4) The methods of transportation, care, and maintenance to be used with live species;

(5) Any requirements for reports or rights of inspections with respect to any activities carried out pursuant to the permit;

(6) The transferability or assignability of the permit;

(7) The sale or other disposition of the species, its progeny, or the species product; and

(8) A reasonable fee covering the costs of issuance of such permit, including reasonable inspections and an appropriate apportionment of overhead and administrative expenses of the Department of Commerce. All such fees will be deposited in the Treasury to the credit of the appropriation which is current and chargeable for the cost of furnishing the service.

§ 222.309 Permits for listed species of sea turtles involving the Fish and Wildlife Service.

(a) This section establishes specific procedures for issuance of the following permits: scientific purposes or to enhance the propagation or survival of endangered or threatened species of sea

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turtles; zoological exhibition or educational purposes for threatened species of sea turtles; and permits that requires coordination with the Fish and Wildlife Service. The National Marine Fisheries Service maintains jurisdiction for such species in the marine environment. The Fish and Wildlife Service maintains jurisdiction for such species of sea turtles in the land environment.

(b) For permits relating to any activity in the marine environment exclusively, permit applicants and permittees must comply with the regulations in parts 222, 223, and 224 of this chapter.

(c) For permits relating to any activity in the land environment exclusively, permit applicants must submit applications to the Wildlife Permit Office (WPO) of the U.S. Fish and Wildlife Service in accordance with either 50 CFR 17.22(a), if the species is endangered, or 50 CFR 17.32(a), if the species is threatened.

(d) For permits relating to any activity in both the land and marine environments, applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing of those activities under its jurisdiction. Based on this review and processing, WPO will issue either a permit or a letter of denial in accordance with its own regulations.

(e) For permits relating to any activity in a marine environment and that also requires a permit under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (TIAS 8249, July 1, 1975) (50 CFR part 23), applicants must submit applications to the WPO. WPO will forward the application to NMFS for review and processing, after which WPO will issue a combination ESA/CITES permit or a letter of denial.

§ 222.310 Permit authority for designated agents and employees of specified Federal and state agencies.

(a) This section constitutes a programmatic permit, pursuant to 16 U.S.C. 1539(a)(1)(A), that authorizes activities by agents and employees of Federal and state agencies, as described in paragraph (b) of this section, to aid stranded endangered sea turtles,

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and to salvage, collect data from, and dispose of, dead carcasses of endangered sea turtles in the marine environment. For purposes of this section, 'stranded' means endangered sea turtles, in the marine environment, that are alive but sick, injured, or entangled.

(b) If any member of any endangered species of sea turtle is found stranded or dead in the marine environment, any agent or employee of the National Marine Fisheries Service, the Fish and Wildlife Service, the U.S. Coast Guard, or any other Federal land or water management agency, or any agent or employee of a state agency responsible for fish and wildlife who is designated by his or her agency for such purposes, may, when acting in the course of his or her official duties, take such endangered sea turtles if such taking is necessary to aid a stranded sea turtle, or dispose of or salvage a dead sea turtle, or collect data from a dead sea turtle which may be useful for scientific and educational purposes. Live turtles will be handled as described in § 223.206(d)(1). Whenever possible, live sea turtles shall be returned to their aquatic environment as soon as possible. The following data collection activities for live turtles while they are in the marine environment are allowed:

(1) Turtles may be flipper and passive integrated transponder (PIT) tagged, prior to release. Flipper tags would be applied to the trailing edge of either the front or rear flippers with standard tagging applicators after the tagging area has been cleaned with alcohol or iodine solution. PIT tags would be inserted according to best practice, approved scientific protocols, after cleaning the insertion site with alcohol or iodine solution. Before application of flipper tags or insertion of PIT tags, all flippers and the neck/shoulder area will be examined and scanned for the presence of any pre-existing flipper or PIT tags.

(2) Turtles may also be weighed, measured, and photographed prior to release.

(3) When handling turtles exhibiting fibropapilloma, all equipment (tagging equipment, tape measures, etc.) that comes in contact with the turtle shall be cleaned with a mild bleach solution.

(c) Every action shall be reported in writing to the Assistant Administrator, or authorized representative, via the agency or institution designated by the state to record such events. Reports shall contain the following information:

(1) Name and position of the official or employee involved;

(2) Description of the sea turtle(s) involved including species and condition of the animal;

(3) When applicable, description of entangling gear, its location on the turtle, and the amount of gear left on the turtle at release;

(4) Method, date and location of disposal of the sea turtle(s), including, if applicable, where the sea turtle(s) has been retained in captivity; and

(5) Such other information as the Assistant Administrator, or authorized representative, may require.

[70 FR 42509, July 25, 2005]

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

Subpart A—General Provisions

Sec.

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223.206 Exceptions to prohibitions relating to sea turtles.

223.207 Approved TEDs.

223.209 [Reserved]

FIGURES 1-2 TO PART 223 [RESERVED]

FIGURE 3 TO PART 223—MATAGORDA TED

FIGURE 4 TO PART 223—GEORGIA TED

FIGURE 5 TO PART 223—NET DIAGRAM FOR THE EXCLUDER PANEL OF THE PARKER SOFT TED

FIGURE 6 TO PART 223—TED EXTENSION IN SUMMER FLOUNDER TRAWL

FIGURES 7-9b TO PART 223 [RESERVED]

FIGURE 10 TO PART 223—FLOUNDER TED

FIGURE 11 TO PART 223 [RESERVED]

FIGURE 12 TO PART 223—ESCAPE OPENING & COVER DIMENSIONS FOR 71-INCH TED

FIGURE 13 TO PART 223—SINGLE GRID HARD TED ESCAPE OPENING

FIGURE 14a TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH STRAIGHT BARS ATTACHED TO THE BOTTOM OF THE FRAME

FIGURE 14b TO PART 223—MAXIMUM ANGLE OF DEFLECTOR BARS WITH BENT BARS ATTACHED TO THE BOTTOM OF THE FRAME

FIGURE 15 TO PART 223—WEEDLESS TED BRACE BAR DESCRIPTION

FIGURE 16 TO PART 223—ESCAPE OPENING AND FLAP DIMENSIONS FOR THE DOUBLE COVER FLAP TED

AUTHORITY: 16 U.S.C. 1531-1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*; 16 U.S.C. 5503(d) for § 223.206(d)(9).

SOURCE: 43 FR 32809, July 28, 1978, unless otherwise noted. Redesignated at 64 FR 14068, Mar. 23, 1999.

Subpart A—General Provisions

§ 223.101 Purpose and scope.

(a) The regulations contained in this part identify the species under the jurisdiction of the Secretary of Commerce that have been determined to be threatened species pursuant to section 4(a) of the Act, and provide for the conservation of such species by establishing rules and procedures to governing activities involving the species.

(b) The regulations contained in this part apply only to the threatened species enumerated in § 223.102.

(c) The provisions of this part are in addition to, and not in lieu of, other regulations of parts 222 through 226 of this chapter which prescribe additional restrictions or conditions governing threatened species.

[64 FR 14068, Mar. 23, 1999]

§ 223.102 Enumeration of threatened marine and anadromous species.

The species determined by the Secretary of Commerce to be threatened pursuant to section 4(a) of the Act, as well as species listed under the Endangered Species Conservation Act of 1969 by the Secretary of the Interior and currently under the jurisdiction of the Secretary of Commerce, are the following:

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of threatened species, the locations where they are listed, and the citations for the listings and critical habitat designations.

EXCEPTIONS

Sec. 10.

(a) PERMITS.-

- (1) The Secretary may permit, under such terms and conditions as he shall prescribe-**
 - (A) any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant subsection (j); or**
 - (B) any taking otherwise prohibited by section 9(a)(1)(B) if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.**

- (2)**
 - (A) No permit may be issued by the Secretary authorizing any taking referred to in paragraph (1)(B) unless the applicant therefor submits to the Secretary a conservation plan that specifies-**
 - (i) the impact which will likely result from such taking;**
 - (ii) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps;**
 - (iii) what alternative actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and**
 - (iv) such other measures that the Secretary may require as being necessary or appropriate for purposes of the plan.**
 - (B) If the Secretary finds, after opportunity for public comment, with respect to a permit application and the related conservation plan that-**
 - (i) the taking will be incidental;**
 - (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;**
 - (iii) the applicant will ensure that adequate funding for the plan will be provided;**
 - (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and**
 - (v) the measures, if any, required under subparagraph (A)(iv) will be met;****and he has received such other assurances as he may require that the plan will be implemented, the Secretary shall issue the permit. The permit shall contain such terms and conditions as the Secretary deems necessary or appropriate to carry out the purposes of this paragraph, including, but not limited to, such reporting requirements as the Secretary deems necessary for determining whether such terms and conditions are being complied with.**
 - (C) The Secretary shall revoke a permit issued under this paragraph if he finds that the permittee is not complying with the terms and conditions of the permit.**

(b) HARDSHIP EXEMPTIONS.-

- (1) If any person enters into a contract with respect to a species of fish or wildlife or plant before the date of the publication in the Federal Register of notice of consideration of that species as an endangered species and the subsequent listing of that species as an endangered species pursuant to section 4 of this Act will cause undue hardship to such person under the contract, the Secretary, in order to minimize such hardship, may exempt such person from the application of section 9(a) of this Act to the extent the Secretary deems appropriate if such person applies to him for such exemption and includes with such application such information as the Secretary may require to prove such hardship; except that**
 - (A) no such exemption shall be for a duration of more than one year from the date of publication in the Federal Register of notice of consideration of the species concerned, or shall apply to a quantity of fish or wildlife or plants in excess of that specified by the Secretary;**
 - (B) the one-year period for those species of fish or wildlife listed by the Secretary as endangered prior to the effective date of this Act shall expire in accordance with the**

terms of section 3 of the Act of December 5, 1969 (83 Stat. 275); and

(C) no such exemption may be granted for the importation or exportation of a specimen listed in Appendix I of the Convention which is to be used in a commercial activity.

(2) As used in this subsection, the term "undue economic hardship" shall include, but not be limited to:

(A) substantial economic loss resulting from inability caused by this Act to perform contracts with respect to species of fish and wildlife entered into prior to the date of publication in the Federal Register of a notice of consideration of such species as an endangered species;

(B) substantial economic loss to persons who, for the year prior to the notice of consideration of such species as an endangered species, derived a substantial portion of their income from the lawful taking of any listed species, which taking would be made unlawful under this Act; or

(C) curtailment of subsistence taking made unlawful under this Act by persons

(i) not reasonably able to secure other sources of subsistence; and

(ii) dependent to a substantial extent upon hunting and fishing for subsistence; and

(iii) who must engage in such curtailed taking for subsistence purposes.

(3) The Secretary may make further requirements for a showing of undue economic hardship as he deems fit. Exceptions granted under this section may be limited by the Secretary in his discretion as to time, area, or other factor of applicability.

(c) NOTICE AND REVIEW.-The Secretary shall publish notice in the Federal Register of each application for an exemption or permit which is made under this section. Each notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data, views, or arguments with respect to the application; except that such thirty-day period may be waived by the Secretary in an emergency situation where the health or life of an endangered animal is threatened and no reasonable alternative is available to the applicant, but notice of any such waiver shall be published by the Secretary in the Federal Register within ten days following the issuance of the exemption or permit. Information received by the Secretary as part of any application shall be available to the public as a matter of public record at every stage of the proceeding.

(d) PERMIT AND EXEMPTION POLICY.-The Secretary may grant exceptions under subsections

(a)(1)(A) and (b) of this section only if he finds and publishes his finding in the Federal Register that

(1) such exceptions were applied for in good faith,

(2) if granted and exercised will not operate to the disadvantage of such endangered species, and

(3) will be consistent with the purposes and policy set forth in section 2 of this Act.

(e) ALASKA NATIVES.-

(1) Except as provided in paragraph (4) of this subsection the provisions of this Act shall not apply with respect to the taking of any endangered species or threatened species, or the importation of any such species taken pursuant to this section, by-

(A) any Indian, Aleut, or Eskimo who is an Alaskan Native who resides in Alaska; or

(B) any non-native permanent resident of an Alaskan native village; if such taking is primarily for subsistence purposes. Non-edible byproducts of species taken pursuant to this section may be sold in interstate commerce when made into authentic native articles of handicrafts and clothing; except that the provisions of this subsection shall not apply to any non-native resident of an Alaskan native village found by the Secretary to be not primarily dependent upon the taking of fish and wildlife for consumption or for the creation and sale of authentic native articles of handicrafts and clothing.

(2) Any taking under this subsection may not be accomplished in a wasteful manner.

(3) As used in this subsection-

(i) The term "subsistence" includes selling any edible portion of fish or wildlife in native villages and towns in Alaska for native consumption within native villages or towns; and

(ii) The term "authentic native articles of handicrafts and clothing" means items composed wholly or in some significant respect to natural materials, and which are produced, decorated or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to, weaving, carving, stitching, sewing, lacing, beading, drawing, and painting.

(4) Notwithstanding the provisions of paragraph (1) of this subsection, whenever the Secretary determines that any species of fish or wildlife which is subject to taking under the provisions of this subsection is an endangered species or threatened species, and that such taking materially and negatively affects the threatened or endangered species, he may prescribe regulations upon the taking of such species by any such Indian, Aleut, Eskimo, or non-native Alaskan resident of an Alaskan native village. Such regulations may be established with reference to species, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the policy of this Act. Such regulations shall be prescribed after a notice and hearings in the affected judicial districts of Alaska and as otherwise required by section 103 of the Marine Mammal Protection Act of 1972, and shall be removed as soon as the Secretary determines that the need for their impositions has disappeared.

(f)

(1) As used in this subsection-

(A) The term "Pre-Act endangered species part" means-

(i) any sperm whale oil, including derivatives thereof, which was lawfully held within the United States on December 28, 1973, in the course of a commercial activity; or

(ii) any finished scrimshaw product, if such product or the raw material for such product was lawfully held within the United States on December 28, 1973, in the course of a commercial activity.

(B) The term "scrimshaw product" means any art form which involves the substantial etching or engraving of designs upon, or the substantial carving of figures, patterns, or designs from, any bone or tooth of any marine mammal of the order Cetacea. For purposes of this subsection, polishing or the adding of minor superficial markings does not constitute substantial etching, engraving, or carving.

(2) The Secretary, pursuant to the provisions of this subsection, may exempt, if such exemption is not in violation of the Convention, any pre-Act endangered species part from one or more of the following prohibitions:

(A) The prohibition on exportation from the United States set forth in section 9(a)(1)(A) of this Act.

(B) Any prohibition set forth in section 9(a)(1) (E) or (F) of this Act.

(3) Any person seeking an exemption described in paragraph (2) of this subsection shall make application therefor to the Secretary in such form and manner as he shall prescribe, but no such application may be considered by the Secretary unless the application-

(A) is received by the Secretary before the close of the one year period beginning on the date on which regulations promulgated by the Secretary to carry out this subsection first take effect;

(B) contains a complete and detailed inventory of all pre-Act endangered species parts for which the applicant seeks exemption;

(C) is accompanied by such documentation as the Secretary may require to prove that any endangered species part or product claimed by the applicant to be a pre-Act endangered species part is in fact such a part; and

(D) contains such other information as the Secretary deems necessary and appropriate to carry out the purposes of this subsection.

(4) If the Secretary approves any application for exemption made under this subsection, he shall issue to the applicant a certificate of exemption which shall specify-

(A) any prohibition in section 9(a) of this Act which is exempted;

- (B) the pre-Act endangered species parts to which the exemption applies;**
- (C) the period of time during which the exemption is in effect, but no exemption made under this subsection shall have force and effect after the close of the three-year period beginning on the date of issuance of the certificate unless such exemption is renewed under paragraph (8); and**
- (D) any term or condition prescribed pursuant to paragraph (5)(A) or (B), or both, which the Secretary deems necessary or appropriate.**

(5) The Secretary shall prescribe such regulations as he deems necessary and appropriate to carry out the purposes of this subsection. Such regulations may set forth-

- (A) terms and conditions which may be imposed on applicants for exemptions under this subsection (including, but not limited to, requirements that applicants register inventories, keep complete sales records, permit duly authorized agents of the Secretary to inspect such inventories and records, and periodically file appropriate reports with the Secretary); and**
- (B) terms and conditions which may be imposed on any subsequent purchaser of any pre-Act endangered species part covered by an exemption granted under this subsection; to insure that any such part so exempted is adequately accounted for and not disposed of contrary to the provisions of this Act. No regulation prescribed by the Secretary to carry out the purposes of this subsection shall be subject to section 4(f)(2)(A)(i) of this Act.**

(6)

(A) Any contract for the sale of pre-Act endangered species parts which is entered into by the Administrator of General Services prior to the effective date of this subsection and pursuant to the notice published in the Federal Register on January 9, 1973, shall not be rendered invalid by virtue of the fact that fulfillment of such contract may be prohibited under section 9(a)(1)(F).

(B) In the event that this paragraph is held invalid, the validity of the remainder of the Act, including the remainder of this subsection, shall not be affected.

(7) Nothing in this subsection shall be construed to-

(A) exonerate any person from any act committed in violation of paragraphs (1)(A), (1)(E), or (1)(F) of section 9(a) prior to the date of enactment of this subsection; or

(B) immunize any person from prosecution for any such act.

(8)

(A)

(i) Any valid certificate of exemption which was renewed after October 13, 1982, and was in effect on March 31, 1988, shall be deemed to be renewed for a 6-month period beginning on the date of enactment of the Endangered Species Act Amendments of 1988. Any person holding such a certificate may apply to the Secretary for one additional renewal of such certificate for a period not to exceed 5 years beginning on the date of such enactment.

(B) If the Secretary approves any application for renewal of an exemption under this paragraph, he shall issue to the applicant a certificate of renewal of such exemption which shall provide that all terms, conditions, prohibitions, and other regulations made applicable by the previous certificate shall remain in effect during the period of the renewal.

(C) No exemption or renewal of such exemption made under this subsection shall have force and effect after the expiration date of the certificate of renewal of such exemption issued under this paragraph.

(D) No person may, after January 31, 1984, sell or offer for sale in interstate or foreign commerce, any pre-Act finished scrimshaw product unless such person holds a valid certificate of exemption issued by the Secretary under this subsection, and unless such product or the raw material for such product was held by such person on October 13, 1982.

(g) In connection with any action alleging a violation of section 9, any person claiming the benefit of any

exemption or permit under this Act shall have the burden of proving that the exemption or permit is applicable, has been granted, and was valid and in force at the time of the alleged violation.

(h) CERTAIN ANTIQUE ARTICLES.-

(1) Sections 4(d), 9(a), and 9(c) do not apply to any article which-

(A) is not less than 100 years of age;

(B) is composed in whole or in part of any endangered species or threatened species listed under section 4;

(C) has not been repaired or modified with any part of any such species on or after the date of the enactment of this Act; and

(D) is entered at a port designated under paragraph (3).

(2) Any person who wishes to import an article under the exception provided by this subsection shall submit to the customs officer concerned at the time of entry of the article such documentation as the Secretary of the Treasury, after consultation with the Secretary of the Interior, shall by regulation require as being necessary to establish that the article meets the requirements set forth in paragraph (1) (A), (B), and (C).

(3) The Secretary of the Treasury, after consultation with the Secretary of the Interior, shall designate one port within each customs region at which articles described in paragraph (1) (A), (B), and (C) must be entered into the customs territory of the United States.

(4) Any person who imported, after December 27, 1973, and on or before the date of the enactment of the Endangered Species Act Amendments of 1978, any article described in paragraph (1) which-

(A) was not repaired or modified after the date of importation with any part of any endangered species or threatened species listed under section 4;

(B) was forfeited to the United States before such date of the enactment, or is subject to forfeiture to the United States on such date of enactment, pursuant to the assessment of a civil penalty under section 11; and

(C) is in the custody of the United States on such date of enactment; may, before the close of the one-year period beginning on such date of enactment make application to the Secretary for return of the article. Application shall be made in such form and manner, and contain such documentation, as the Secretary prescribes. If on the basis of any such application which is timely filed, the Secretary is satisfied that the requirements of this paragraph are met with respect to the article concerned, the Secretary shall return the article to the applicant and the importation of such article shall, on and after the date of return, be deemed to be a lawful importation under this Act.

(i) NONCOMMERCIAL TRANSSHIPMENTS.-Any importation into the United States of fish or wildlife shall, if-

(1) such fish or wildlife was lawfully taken and exported from the country of origin and country of reexport, if any;

(2) such fish or wildlife is in transit or transshipment through any place subject to the jurisdiction of the United States enroute to a country where such fish or wildlife may be lawfully imported and received;

(3) the exporter or owner of such fish or wildlife gave explicit instructions not to ship such fish or wildlife through any place subject to the jurisdiction of the United States, or did all that could have reasonably been done to prevent transshipment, and the circumstances leading to the transshipment were beyond the exporter's or owner's control;

(4) the applicable requirements of the Convention have been satisfied; and

(5) such importation is not made in the course of a commercial activity, be an importation not in violation of any provision of this Act or any regulation issued pursuant to this Act while such fish or wildlife remains in the control of the United States Customs Service.

(j) EXPERIMENTAL POPULATIONS.-

(1) For purposes of this subsection, the term "experimental population" means any population (including any offspring arising solely therefrom) authorized by the Secretary for release under paragraph (2), but only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species.

(2)

(A) The Secretary may authorize the release (and the related transportation) of any population (including eggs, propagules, or individuals) of an endangered species or a threatened species outside the current range of such species if the Secretary determines that such release will further the conservation of such species.

(B) Before authorizing the release of any population under subparagraph (A), the Secretary shall by regulation identify the population and determine, on the basis of the best available information, whether or not such population is essential to the continued existence of an endangered species or a threatened species.

(C) For the purposes of this Act, each member of an experimental population shall be treated as a threatened species; except that-

- (i) solely for purposes of section 7 (other than subsection (a)(1) thereof), an experimental population determined under subparagraph (B) to be not essential to the continued existence of a species shall be treated, except when it occurs in an area within the National Wildlife Refuge System or the National Park System, as a species proposed to be listed under section 4; and**
- (ii) critical habitat shall not be designated under this Act for any experimental population determined under subparagraph (B) to be not essential to the continued existence of a species.**

(3) The Secretary, with respect to populations of endangered species or threatened species that the Secretary authorized, before the date of the enactment of this subsection, for release in geographical areas separate from the other populations of such species, shall determine by regulation which of such populations are an experimental population for the purposes of this subsection and whether or not each is essential to the continued existence of an endangered species or a threatened species.

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FUR SEAL ACT

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March 2, 2004

FUR SEAL ACT OF 1966¹

[Public Law 89-702, Approved Nov. 2, 1966, 80 Stat. 1091]

[As Amended Through P.L. 108-204, March 2, 2004]

AN ACT To protect and conserve the North Pacific fur seals, to provide for the administration of the Pribilof Islands, to conserve the fur seals and other wildlife on the Pribilof Islands, and to protect sea otters on the high seas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. [16 U.S.C. 1151 note] This Act may be cited as the “Fur Seal Act of 1966”.

TITLE I—FUR SEAL MANAGEMENT

SEC. 101. [16 U.S.C. 1151] (a) “Commission” means the North Pacific Fur Seal Commission established pursuant to article V of the Convention.

(b) “Convention” means the Interim Convention on the Conservation of North Pacific Fur Seals signed at Washington on February 9, 1957, as amended by the protocol signed in Washington on October 8, 1963; by the exchange of notes among the party governments which became effective on September 3, 1969; by the protocol signed in Washington on May 7, 1976; and by the protocol signed in Washington on October 14, 1980, by the parties.

(c) “Cure” or “curing” means the performance of those post-harvest activities traditionally performed on the Pribilof Islands, including cooling, washing, removal of blubber, soaking in brine, draining, treating with salt or boric acid, and packing in containers for shipment of fur seal skins.

(d) “Fur Seal” means the North Pacific Fur Seal, *Callorhinus Ursinus*.

(e) “Import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(f)² “Natives of the Pribilof Islands” means any Aleuts who are permanent residents of the Pribilof Islands, or any organization or entity representing such natives.

¹ Similar provisions relating to the Pribilof Islands, including amendments made to this Act, were enacted by section 144(e) of the Miscellaneous Appropriations Act, 2001 (P.L. 106-554; approved Dec. 21, 2000; 114 Stat. 2763A-244) and the Pribilof Islands Transition Act (P.L. 106-652; approved Dec. 23, 2000; 114 Stat. 2794).

² Effective upon the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, section 303 of Public Law 102-251 amends section 101 by redesignating subsections (f)–(m) as subsections (g)–(n) and inserts a new subsection (f) as follows:

Continued

(g) "North Pacific Ocean" means the waters of the Pacific Ocean north of the thirtieth parallel of north latitude, including the Bering, Okhotsk, and Japan Seas.

(h) "Party" or "parties" means the United States of America, Canada, Japan, and Russia (except that as used in subsection (b) of this section, "party" and "parties" refer to the Union of Soviet Socialist Republics).

(i) "Person" means any individual, partnership, corporation, trust, association or any other private entity, or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State or political subdivision thereof, or of any foreign government.

(j) "Pribilof Islands" means the islands of Saint Paul and Saint George, Walrus and Otter Islands, and Sea Lion Rock.

(k) "Sealing" means the taking of fur seals.

(l) "Secretary" means the Secretary of Commerce.

(m) "Take" or "taking" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill.

SEC. 102. [16 U.S.C. 1152] It is unlawful, except as provided in this Act or by regulation of the Secretary, for any person or vessel subject to the jurisdiction of the United States to engage in the taking of fur seals in the North Pacific Ocean or on lands or waters under the jurisdiction of the United States, or to use any port or harbor or other place under the jurisdiction of the United States for any purpose connected in any way with such taking, or for any person to transport, import, offer for sale, or possess at any port or place or on any vessel, subject to the jurisdiction of the United States, fur seals or the parts thereof, including, but not limited to, raw, dressed, or dyed fur seal skins, taken contrary to the provisions of this Act or the Convention, or for any person subject to the jurisdiction of the United States to refuse to permit, except within the Exclusive Economic Zone of the United States, a duly authorized official of Canada, Japan, or Russia to board and search any vessel which is outfitted for the harvesting of living marine resources and which is subject to the jurisdiction of the United States to determine whether such vessel is engaged in sealing contrary to the provisions of said Convention.

SEC. 103. [16 U.S.C. 1153] (a) Indians, Aleuts, and Eskimos who dwell on the coasts of the North Pacific Ocean are permitted to take fur seals and dispose of their skins after the skins have been officially marked and certified by a person authorized by the Secretary: *Provided*, That the seals are taken for subsistence uses as defined in section 109(f)(2) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1379), and only in canoes not transported by or used in connection with other vessels, and propelled entirely by oars, paddles, or sails, and manned by not more than five persons each, in the way hitherto practiced and without the use of firearms. This authority shall not apply to Indians,

"(f) 'Jurisdiction of the United States' includes jurisdiction over the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured."

Aleuts, and Eskimos while they are employed by any person for the purpose of taking fur seals or are under contract to deliver the skins to any person.

(b) Indians, Aleuts, and Eskimos who live on the Pribilof Islands are authorized to take fur seals for subsistence purposes as defined in section 109(f)(2) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1379), under such conditions as recommended by the Commission and accepted by the Secretary of State pursuant to regulations promulgated by the Secretary.

SEC. 104. [16 U.S.C. 1154] The Secretary shall (1) conduct such scientific research and investigations on the fur seal resources of the North Pacific Ocean as he deems necessary to carry out the obligations of the United States under the Convention, and (2) permit, subject to such terms and conditions as he deems desirable, the taking, transportation, importation, exportation, or possession of fur seals or their parts for educational, scientific, or exhibition purposes.

SEC. 105. [16 U.S.C. 1155] (a) The Secretary shall prescribe such regulations with respect to the taking of fur seals on the Pribilof Islands and on lands subject to the jurisdiction of the United States as he deems necessary and appropriate for the conservation, management, and protection of the fur seal population, and to dispose of any fur seals seized or forfeited pursuant to this Act, and to carry out the provisions of the Convention, and shall deliver to authorized agents of the parties such fur seal skins as the parties are entitled to under the Convention.

(b) The Secretary is authorized to enter into agreements with any public or private agency or person for the purpose of carrying out the provisions of the Convention and of this title, including but not limited to the taking of fur seals on the Pribilof Islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom.

(c) The Secretary shall give preference to the village corporations of Saint Paul and Saint George Islands established pursuant to section 8 of the Alaska Native Claims Settlement Act (Public Law 92-203) for the taking of fur seals on the village corporations' respective islands, and the curing and marketing of the sealskins and other seal parts, and may retain the proceeds therefrom. Any proceeds therefrom will be deposited in a separate fund in the Treasury and will be available to the Secretary, subject to appropriations, for the purpose of this section. All seal harvests will be financed, to the extent possible, from proceeds collected in preceding years or unsold assets retained from harvests conducted in preceding years. In the event that such assets and proceeds are insufficient, as determined by the Secretary, to finance the seal harvest in accordance with the requirements of the Convention, there are authorized to be appropriated to the Secretary for fiscal year 1984, and for fiscal year 1985 and beyond if the Convention is extended by protocol signed by the parties and made effective as to the United States, such sums as may be necessary to carry out the harvest and curing on the Pribilof Islands. Such amounts as are determined by the Secretary to exceed amounts required to carry out this section shall be transferred to the General Fund of the Treasury.

SEC. 106. [16 U.S.C. 1156] (a) Any person authorized to enforce the provisions of this Act who has reasonable cause to believe that any vessel outfitted for the harvesting of living marine resources and subject to the jurisdiction of any of the parties to the Convention is violating the provisions of article III of the Convention may, except within the areas in which another State exercises fisheries jurisdiction, board and search such vessel. Such person shall carry a special certificate of identification issued by the Secretary or Secretary of the department in which the Coast Guard is operating which shall be in English, Japanese, and Russian and which shall be exhibited to the master of the vessel upon request.

(b) If, after boarding and searching such vessel, such person continues to have reasonable cause to believe that such vessel, or any person onboard, is violating said article, he may seize such vessel or arrest such person, or both. The Secretary of State shall, as soon as practicable, notify the party having jurisdiction over the vessel or person of such seizure or arrest.

The Secretary or the Secretary of the department in which the Coast Guard is operating, upon request of the Secretary of State, shall deliver the seized vessel or arrested person, or both, as promptly as practicable to the authorized officials of said party: *Provided*, That whenever said party cannot immediately accept such delivery, the Secretary or the Secretary of the department in which the Coast Guard is operating may, upon the request of the Secretary of State, keep the vessel or person in custody within the United States.

(c) At the request of said party, the Secretary or the Secretary of the department in which the Coast Guard is operating, shall direct the person authorized to enforce the provisions of this Act to attend the trial as a witness in any case arising under said article or give testimony by deposition, and shall produce such records and files or copies thereof as may be necessary to establish the offense.

SEC. 107. [16 U.S.C. 1157] The President shall appoint to the Commission a United States Commissioner who shall serve at the pleasure of the President. The President may appoint one Native from each of the two inhabited Pribilof Islands to serve as Advisors to the Commissioner and as liaisons between the Commissioner and the Natives of the Pribilof Islands. The President may also appoint other interested parties as Advisors to the Commissioner. Such Advisors shall serve at the pleasure of the President. The President may also appoint a Deputy United States Commissioner who shall serve at the pleasure of the President. The Deputy Commissioner shall be the principal adviser of the Commissioner, and shall perform the duties of the Commissioner in the case of his death, resignation, absence, or illness. The Commissioner, the Deputy Commissioner, and the Advisors shall receive no compensation for their services. The Commissioners may be paid travel¹ expenses and per diem in lieu of subsistence at the rates authorized by section 5 of the Administrative Expense Act of 1946 when engaged in the performance of their duties.

SEC. 108. [16 U.S.C. 1158] The Secretary of State, with the concurrence of the Secretary, is authorized to accept or reject, on

¹ So in law. Probably should be "travel".

behalf of the United States, recommendations made by the Commission pursuant to article V of the Convention.

SEC. 109. [16 U.S.C. 1159] The head of any Federal agency is authorized to consult with and provide technical assistance to the Secretary or the Commission whenever such assistance is needed and reasonably can be furnished in carrying out the provisions of this title. Any Federal agency furnishing assistance hereunder may expend its own funds for such purposes, with or without reimbursement.

TITLE II—ADMINISTRATION OF THE PRIBILOF ISLANDS

SEC. 201. [16 U.S.C. 1161] The Secretary shall administer the fur seal rookeries and other Federal real and personal property on the Pribilof Islands, with the exception of lands purchased by the U.S. Fish and Wildlife Service under section 1417 of the Alaska National Interest Lands Conservation Act (Public Law 96-487) or acquired or purchased by any other authority after enactment of the Fur Seal Act Amendments of 1983 and, in consultation with the Secretary of the Interior, shall ensure that activities on such property are consistent with the purposes of conserving, managing, and protecting the North Pacific fur seals and other wildlife and for other purposes consistent with that primary purpose.

SEC. 202. [16 U.S.C. 1162] In carrying out the provisions of this title, the Secretary is authorized—

(1) to operate, both real and personal, and repair such Government-owned property, both real and personal, and other facilities held by the Secretary on the Pribilof Islands as may be necessary; and

(2) to provide the employees of the Department of Commerce and other Federal agencies and their dependents, at reasonable rates to be determined by the Secretary, with such facilities, services, and equipment as he deems necessary, including, but not limited to, food, fuel, shelter, and transportation.

SEC. 203. [16 U.S.C. 1163] The State of Alaska will be responsible for meeting the educational needs of the citizens of the Pribilof Islands.

SEC. 204. [16 U.S.C. 1164] The Secretary of Health and Human Services shall provide medical and dental care to the Natives of the Pribilof Islands with or without reimbursement, as provided by other law. He is authorized to provide such care to Federal employees and their dependents and tourists and other persons in the Pribilof Islands at reasonable rates to be determined by him. He may purchase, lease, construct, operate, and maintain such facilities, supplies, and equipment as he deems necessary to carry out the provisions of this section; and the costs of such items, including medical and dental care, shall be charged to the budget of the Secretary of Health and Human Services. Nothing in this Act shall be construed as superseding or limiting the authority and responsibility of the Secretary of Health and Human Services under the Act of August 5, 1954, as amended, or any other law with respect to medical and dental care of natives or other persons in the Pribilof Islands.

SEC. 205.¹ [16 U.S.C. 1165] (a) Any provision of law relating to the transfer and disposal of Federal property to the contrary notwithstanding, the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, is authorized to bargain, grant, sell or otherwise convey, on such terms as he deems to be in the best interests of the United States and in furtherance of the purposes of this Act, any and all right, title, and interest of the United States in and to the property, both real and personal, held by the Secretary on the Pribilof Islands: *Provided*, That such property is specified in a document entitled "Transfer of Property on the Pribilof Islands: Descriptions, Terms and Conditions," which is submitted to the Congress on or before October 31, 1983.

(b) The property transfer document described in subsection (a) shall include, but need not be limited to—

- (1) a description of each conveyance;
- (2) the terms to be imposed on each conveyance;
- (3) designation of the recipient of each conveyance;
- (4) a statement noting acceptance of each conveyance, including the terms, if any, under which it is accepted; and
- (5) an identification of all Federal property to be retained by the Federal Government on the Pribilof Islands to meet its responsibilities as described in this Act and under the Convention.

(c) Not later than 3 months after the date of the enactment of the Pribilof Islands Transition Act, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report that includes—

- (1) a description of all property specified in the document referred to in subsection (a) that has been conveyed under that subsection;
- (2) a description of all Federal property specified in the document referred to in subsection (a) that is going to be conveyed under that subsection; and
- (3) an identification of all Federal property on the Pribilof Islands that will be retained by the Federal Government to meet its responsibilities under this Act, the Convention, and any other applicable law.

(d) A Memorandum of Understanding shall be entered into by the Secretary, a representative of the local governmental authority on each Island, the trustee or trustees, and the appropriate officer of the State of Alaska setting forth the respective responsibilities of the Federal Government, the Trust, and the State regarding—

¹Section 144(e)(5)(C) of the Miscellaneous Appropriations Act, 2001 (114 Stat. 2763A–247) provides as follows:

(C) Effective on the date on which the Secretary of Commerce makes the certification described in subparagraph (b)(2), the following provisions are repealed:

- (i) Section 205 of the Fur Seal Act of 1966 (16 U.S.C. 1165).
- (ii) Section 3 of Public Law 104–91 (16 U.S.C. 1165 note).

The reference to "subparagraph (b)(2)" probably was intended to be to "subparagraph (B)(ii)". Compare to section 105(c) of Public Law 106–562 (114 Stat. 2798).

(1) application of Federal retirement benefits, severance pay, and insurance benefits with respect to Natives of the Pribilof Islands;

(2) funding to be allocated by the State of Alaska for the construction of boat harbors on St. Paul and St. George Islands;

(3) assumption of the State of Alaska of traditional State responsibilities for facilities and services on such islands in accordance with applicable laws and regulations;

(4) preservation of wildlife resources within the Secretary's jurisdiction;

(5) continued activities relating to the implementation of the Convention;

(6) oversight of the operation of the Trust, established by section 206(a) to further progress toward creation of a stable, diversified, and enduring economy not dependent on commercial fur sealing;

(7) the cooperation of government agencies, rendered through existing programs, in assisting with an orderly transition from Federal management and the creation of a private enterprise economy on the Pribilof Islands as described in this Act; and

(8) such other matters as may be necessary and appropriate for carrying out the purposes of the Act, including the assumption of responsibilities to ensure an orderly transition from Federal management of the Pribilof Islands.

The Memorandum shall be submitted to Congress on or before October 31, 1983.

(e) The grant, sale, transfer or conveyance of any real or personal property pursuant to this section shall not be subject to any form of Federal, State or local taxation. The basis for computing gain or loss on subsequent sale or disposition of such real or personal property for purposes of any Federal, State, or local tax imposed on, or measured by revenue shall be the fair market value of such real or personal property at the time of receipt.

(f) In carrying out the purposes of this Act, the Secretary is authorized to enter into agreements, including but not limited to land exchange agreements with other Departments and Agencies of both the State and Federal Governments, and with third parties, notwithstanding any provision of law relating to the transfer and disposal of Federal property to the contrary; except that the authority of the Secretary of the Interior regarding exchanges involving lands in the National Wildlife Refuge System on the date of enactment of the Fur Seal Act Amendments of 1983 is not affected by this section.

SEC. 206. [16 U.S.C. 1166] (a)(1) Subject to the availability of appropriations, the Secretary shall provide financial assistance to any city government, village corporation, or tribal council of St. George, Alaska, or St. Paul, Alaska.

(2) Notwithstanding any other provision of law relating to matching funds, funds provided by the Secretary as assistance under this subsection may be used by the entity as non-Federal matching funds under any Federal program that requires such matching funds.

(3) The Secretary may not use financial assistance authorized by this Act—

- (A) to settle any debt owed to the United States;
- (B) for administrative or overhead expenses; or
- (C) for contributions sought or required from any person for costs or fees to clean up any matter that was caused or contributed to by such person on or after March 15, 2000.

(4) In providing assistance under this subsection the Secretary shall transfer any funds appropriated to carry out this section to the Secretary of the Interior, who shall obligate such funds through instruments and procedures that are equivalent to the instruments and procedures required to be used by the Bureau of Indian Affairs pursuant to title IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).

(5) In any fiscal year for which less than all of the funds authorized under subsection (c)(1) are appropriated, such funds shall be distributed under this subsection on a pro rata basis among the entities referred to in subsection (c)(1) in the same proportions in which amounts are authorized by that subsection for grants to those entities.

(b)(1) Subject to the availability of appropriations, the Secretary shall provide assistance to the State of Alaska for designing, locating, constructing, redeveloping, permitting, or certifying solid waste management facilities on the Pribilof Islands to be operated under permits issued to the City of St. George and the City of St. Paul, Alaska, by the State of Alaska under section 46.03.100 of the Alaska Statutes.

(2) The Secretary shall transfer any appropriations received under paragraph (1) to the State of Alaska for the benefit of rural and Native villages in Alaska for obligation under section 303 of Public Law 104-182, except that subsection (b) of that section shall not apply to those funds.

(3) In order to be eligible to receive financial assistance under this subsection, not later than 180 days after the date of enactment of this paragraph, each of the Cities of St. Paul and St. George shall enter into a written agreement with the State of Alaska under which such City shall identify by its legal boundaries the tract or tracts of land that such City has selected as the site for its solid waste management facility and any supporting infrastructure.

(c) There are authorized to be appropriated to the Secretary for fiscal years 2001, 2002, 2003, 2004, and 2005—

(1) for assistance under subsection (a) a total not to exceed—

- (A) \$9,000,000, for grants to the City of St. Paul;
- (B) \$6,300,000, for grants to the Tanadgusix Corporation;
- (C) \$1,500,000, for grants to the St. Paul Tribal Council;
- (D) \$6,000,000, for grants to the City of St. George;
- (E) \$4,200,000, for grants to the St. George Tanaq Corporation; and
- (F) \$1,000,000, for grants to the St. George Tribal Council; and

(2) for assistance under subsection (b), for fiscal years 2001, 2002, 2003, 2004, and 2005 a total not to exceed—

(A) \$6,500,000 for the City of St. Paul; and

(B) \$3,500,000 for the City of St. George.

(d) None of the funds authorized by this section may be available for any activity a purpose of which is to influence legislation pending before the Congress, except that this subsection shall not prevent officers or employees of the United States or of its departments, agencies, or commissions from communicating to Members of Congress, through proper channels, requests for legislation or appropriations that they consider necessary for the efficient conduct of public business.

(e) Neither the United States nor any of its agencies, officers, or employees shall have any liability under this Act or any other law associated with or resulting from the designing, locating, contracting for, redeveloping, permitting, certifying, operating, or maintaining any solid waste management facility on the Pribilof Islands as a consequence of—

(1) having provided assistance to the State of Alaska under subsection (b); or

(2) providing funds for, or planning, constructing, or operating, any interim solid waste management facilities that may be required by the State of Alaska before permanent solid waste management facilities constructed with assistance provided under subsection (b) are complete and operational.

In addition, there are authorized to be appropriated to the Secretary \$3,200,000 for fiscal year 1989 and \$1,800,000 for fiscal year 1990 to be used for the purpose of funding the Saint Paul Island Trust, as established pursuant to subsection (a)(1) of this section, and \$3,700,000 for fiscal year 1990 to be used for the purpose of funding the Saint George Trust, as established pursuant to subsection (a)(1).

(f) Each entity which receives assistance authorized under subsection (c) shall submit an audited statement listing the expenditure of that assistance to the Committee on Appropriations and the Committee on Resources of the House of Representatives and the Committee on Appropriations and the Committee on Commerce, Science, and Transportation of the Senate, on the last day of fiscal years 2002, 2004, and 2006.

(g) Amounts authorized under subsection (c) are intended by Congress to be provided in addition to the base funding appropriated to the National Oceanic and Atmospheric Administration in fiscal year 2000.

SEC. 207. [16 U.S.C. 1167] The Secretary is authorized to enter into agreements or contracts or leases with, or to issue permits to, any public or private agency or person for carrying out the provisions of the Convention or this Act.

SEC. 208. [16 U.S.C. 1168] (a) Service by natives of the Pribilof Islands engaged in the taking and curing of fur seal skins and other activities in connection with the administration of such islands prior to January 1, 1950, as determined by the Secretary based on records available to him, shall be considered for purposes of credit under the Civil Service Retirement Act, as amended, as civilian service performed by an employee, as defined in said Act.

(b) The annuity of any person or the annuity of the survivor of any person who shall have performed service described in subsection (a) of this section, and who, prior to November 2, 1966, died or shall have been retired on annuity payable from the civil service retirement and disability fund, shall, upon application filed by the annuitant within one year after November 2, 1966, be adjusted, effective as of the first day of the month immediately following November 2, 1966, so that the amount of the annuity shall be the same as if such subsection had been in effect at the time of such person's retirement or death.

(c) In no case shall credit for the service described in subsection (a) of this section entitle a person to the benefits of section 11(h) of the Civil Service Retirement Act.

(d) Notwithstanding any other provisions of this Act or any other law, benefits under the Civil Service Retirement Act made available by reason of the provisions of this section shall be paid from the civil service retirement and disability fund subject to reimbursement to such fund from the Operations, Research, and Facilities Account of the National Oceanic and Atmospheric Administration in the Department of Commerce, for the purpose of compensating said retirement fund for the cost, as determined by the Civil Service Commission during each fiscal year, of benefits provided by this section.

【SEC. 209. Made amendments to chapter 83 of title 5, United States Code.】

【SEC. 210. (a) Made an amendment to section 105(e) of Public Law 93-638.】

(b) **【25 U.S.C. 450i note】** Notwithstanding any other provision of Law, any Native of the Pribilof Islands employed by the Federal government¹ on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93-638), known as the Indian Self-Determination and Education Assistance Act.

SEC. 211. 【16 U.S.C. 1169】 The Secretary is authorized to prescribe such regulations as he deems necessary to carry out the provisions of this title.

SEC. 212. 【16 U.S.C. 1169a】 (a)(1)² An annuity or survivor annuity based on the service of an employee or Member who performed service described in the second paragraph (13) of subsection (b) or subsection (l)(1)(C) of section 8332 of title 5, United States Code, as added by subsections (b) and (e), respectively, of section 209 of this Act, shall, upon application to the Office of Personnel Management, be recomputed in accordance with the second paragraph (13) of subsection (b) and subsection (l), respectively, of such section 8332, regardless of whether the employee or Member retires before, on, or after the effective date of this paragraph.

(2) Any recomputation of annuity under paragraph (1) of this subsection shall apply with respect to months beginning more than

¹ So in law. Probably should be "Government".

² So in law. This section was enacted without enacting a subsection (b).

30 days after the date on which application for such recomputation is received by the Office.

SEC. 212.³ [16 U.S.C. 1169b] Notwithstanding any other law to the contrary, the Secretary of Commerce shall, to the maximum extent practicable, carry out activities under subsection (a) and fulfill other obligations under Federal and State law relating to the Pribilof Islands, through grants or other agreements with local entities and residents of the Pribilof Islands, unless specialized skills are needed for an activity, and the Secretary specifies in writing that such skills are not available through local entities and residents of the Pribilof Islands.

TITLE III—ENFORCEMENT

SEC. 301. [16 U.S.C. 1171] (a) Every vessel subject to the jurisdiction of the United States that is employed in any manner in connection with a violation of the provision of this Act, including its tackle, apparel, furniture, appurtenances, cargo, and stores shall be subject to forfeiture; and all fur seals, or parts thereof, taken or retained in violation of this Act, or the monetary value thereof, shall be forfeited.

(b) All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of a vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores for violation of the customs laws, the disposition of such vessel, including its tackle, apparel, furniture, appurtenances, cargo, and stores or the proceeds from the sale thereof, and the remission or mitigation of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as such provisions of law are applicable and not inconsistent with the provisions of this Act.

SEC. 302. [16 U.S.C. 1172] (a) Enforcement of the provisions of this Act is the joint responsibility of the Secretary, the Secretary of the Treasury, and the Secretary of the department in which the Coast Guard is operating. In addition, the Secretary may designate officers and employees of the States of the United States to enforce the provisions of this Act which relate to persons or vessels subject to the jurisdiction of the United States. When so designated, such officers and employees are authorized to function as Federal law enforcement agents for these purposes; but they shall not be held and considered as employees of the United States for the purpose of any laws administered by the Office of Personnel Management.

(b) The judges of the United States district courts and United States magistrates may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue such warrants or other process, including warrants or other process issued in admiralty proceedings in Federal district courts, as may be required for enforcement of this Act and any regulations issued thereunder.

(c) Any person authorized to carry out enforcement activities hereunder shall have the power to execute any warrant or process

³The second section 212 resulted from the amendment made by section 144(e)(6)(A)(ii) of the Miscellaneous Appropriations Act, 2001 (114 Stat. 2763A–248).

issued by any officer or court of competent jurisdiction for the enforcement of this Act.

(d) Such person so authorized shall have the power—

(1) with or without a warrant or other process, to arrest any person committing in his presence or view a violation of this Act or the regulations issued thereunder;¹

(2) with a warrant or other process or without a warrant, if he has reasonable cause to believe that a vessel subject to the jurisdiction of the United States or any person onboard is in violation of any provision of this Act or the regulations issued thereunder, to search such vessel and to arrest such person.

(e) Such person so authorized may seize any vessel subject to the jurisdiction of the United States, together with its tackle, apparel, furniture, appurtenances, cargo, and stores, used or employed contrary to the provisions of this Act or the regulations issued hereunder or which it reasonably appears has been used or employed contrary to the provisions of this Act or the regulations issued hereunder.

(f) Such person so authorized may seize, whenever and wherever lawfully found, all fur seals taken or retained in violation of this Act or the regulations issued thereunder. Any fur seals so seized or forfeited to the United States pursuant to this Act shall be disposed of in accordance with the provisions of section 105 of this Act.

SEC. 303. [16 U.S.C. 1173] The Secretary is authorized to prescribe such regulations as he deems necessary and appropriate to carry out the provisions of this title.

SEC. 304. [16 U.S.C. 1174] (a) Any person who knowingly violates any provision of this Act or of any permit or regulation issued thereunder shall, upon conviction, be fined not more than \$20,000 for such violation, or imprisoned for not more than one year, or both.

(b) Any person who violates any provision of this Act or any regulation or permit issued hereunder may be assessed a civil penalty by the Secretary of not more than \$10,000 for each such violation. No penalty shall be assessed unless such person is given notice and opportunity for a hearing with respect to such violation. Hearings held during proceedings for the assessment of civil penalties authorized by this subsection shall be conducted in accordance with section 554 of title 5. The Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and administer oaths. Witnesses summoned shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both,

¹ So in law. Should include "and" after the semicolon.

and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any civil penalty assessed may be remitted or mitigated by the Secretary for good cause shown. Upon any failure to pay a penalty assessed under this subsection, the Secretary may request the Attorney General to institute civil action in a district court of the United States for any district in which such person is found, resides, or transacts business to collect the penalty, and such court shall have jurisdiction to hear and decide any such action.

SEC. 305. [16 U.S.C. 1175] (a) There are authorized to be appropriated to the operations, research, and facilities account of the National Oceanic and Atmospheric Administration in the Department of Commerce, such sums as may be necessary, up to \$2,000,000, for fiscal year 1984 for the purpose of upgrading Federal property to be transferred pursuant to section 205 of this Act, \$736,000 for fiscal year 1984 for the purposes of sections 104 and 208 of this Act and such sums as may be necessary for each fiscal year thereafter for the purposes of sections 104 and 208 of this Act.

(b) The contract authority of the Secretary under this Act is effective for any fiscal year only to the extent that appropriations are available for such purposes.

of publication of the notice of initiation of the requested review. Section 351.213(d)(1) of the Department's regulations regarding review request withdrawals does not specifically reference changed circumstances administrative reviews. In this case, Weyerhaeuser withdrew its request for a changed circumstances review within ninety days of the review being initiated, the time period the Department generally considers reasonable for withdrawing requests for administrative reviews. Therefore, the Department has accepted Weyerhaeuser's withdrawal request in this case as timely.¹

The Department is now rescinding this antidumping duty changed circumstances review. U.S. Customs and Border Protection will continue to suspend entries of subject merchandise at the appropriate cash deposit rate for all entries of certain softwood lumber products from Canada.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: March 23, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-4659 Filed 3-29-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

¹ See *Notice of Rescission of Changed Circumstances Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe and Tube Fittings from Japan*, 67 FR 53777 (August 19, 2002).

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 30, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Walter Ikehara, 808-944-2275, or walter.ikehara@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fishery Services Pacific Islands Region (PIR) manages the U.S. fisheries of the Exclusive Economic Zone (EEZ) in the western Pacific under five fishery management plans (FMPs), prepared by the Western Pacific Fishery Management Council pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMPs are found at 50 CFR part 660.

The record keeping and reporting requirements at 50 CFR part 660 form the basis for this collection of information. PIR requests information from participants in the fisheries and interested persons. This information, upon receipt, results in an increasingly more efficient and accurate database for the management and monitoring of fisheries of the EEZ in the western Pacific.

II. Method of Collection

Paper submissions, electronic reports, and telephone calls are required from participants. Other methods of submittal include Internet and facsimile transmission of paper forms.

III. Data

OMB Number: 0648-0214.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 207.

Estimated Time Per Response: 5 minutes for catch and effort logbooks; 3

minutes for protected species interaction reports; 5 minutes for pre-trip and post-landing notifications; 4 hours for experimental fishing reports; 5 minutes for sales and transshipment reports; 5 minutes for report on gear left at sea; 4 hours for claim for reimbursement for lost fishing time; 1 hour for request for pelagics area closure exemption; and 1 hour for observer placement meetings.

Estimated Total Annual Burden Hours: 2,483.

Estimated Total Annual Cost to Public: \$1,048.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 24, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E6-4613 Filed 3-29-06; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Basic Requirements for All Marine Mammal Special Exception Permits To Take, Import and Export Marine Mammals, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before May 30, 2006.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy Sloan, (301) 713-2289 or Amy.Sloan@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act (MMPA), Fur Seal Act (FSA), and Endangered Species Act (ESA) prohibit certain actions affecting marine mammals and endangered and threatened species, with exceptions. Permits can be obtained for scientific research, enhancing the survival or recovery of a species or stock, commercial and educational photography, and import and capture for public display; authorizations can be obtained for scientific research that involves minimal disturbance. The applicants desiring a permit or authorization must provide certain information in order for the National Marine Fisheries Service to determine whether a proposed activity is consistent with the purposes, policies, and requirements of these laws, and that the activity is in the best interest of the protected species and the public. The permit holders and authorized researchers must report on activities conducted to ensure compliance with permit conditions and protection of the animals. Holders of captive marine mammals must report changes to their animal inventory.

Scientific research and enhancement permit applications for non-salmonid endangered and threatened species previously submitted under OMB No. 0648-0402, will be combined with permit applications for marine mammals in order to streamline the process for requesting takes of multiple species and to accommodate an online application system currently in development. The regulations implementing permit, authorization, and inventory requirements under the

MMPA and FSA are at 50 CFR part 216; the regulations for permit requirements under the ESA are at 50 CFR part 222.

The respondents will be researchers, photographers, and other members of the public seeking exceptions to prohibited activities on marine mammals and endangered and threatened species, excluding salmonids, through permits or authorizations for purposes described above; and holders of marine mammals in captivity.

II. Method of Collection

Permit and authorization application materials and reports are paper and in some cases, electronic, and are written to respond to a required format. Inventory materials and reports are paper forms. Methods of submittal include mail, facsimile transmission, and electronic submission.

III. Data

OMB Number: 0648-0084.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; not-for-profit institutions; business or other for-profit organizations; Federal Government; and State, Local, or Tribal Government.

Estimated Number of Respondents: 518.

Estimated Time Per Response: 32 hours for an application for a scientific research or enhancement permit; 20 hours for an application for a public display permit; 10 hours for an application for a photography permit or a General Authorization; 20 hours for a major amendment or modification to a permit; 3 hours for a minor amendment or modification to a permit or for a change to a General Authorization; 12 hours for a scientific research or enhancement permit report; 8 hours for a General Authorization report; 2 hours for public display or photography permit report; 2 hours for a request to retain or transfer a rehabilitated marine mammal; 2 hours for a marine mammal inventory (1 hour for a transport notification; 30 minutes each for a data sheet and a person/holder/facility sheet); and 2 hours for recordkeeping.

Estimated Total Annual Burden Hours: 6,678.

Estimated Total Annual Cost to Public: \$1,700.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the

agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 24, 2006.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

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BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032706B]

Magnuson-Stevens Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2006 Georges Bank Cod Hook Sector Operations Plan and Agreement and Allocation of Georges Bank Cod Total Allowable Catch

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

ACTION: Notice; request for comments.

SUMMARY: Amendment 13 to the Northeast (NE) Multispecies Fishery Management Plan (FMP) (Amendment 13) authorized allocation of up to 20 percent of the annual Georges Bank (GB) cod total allowable catch (TAC) to the GB Cod Hook Sector (Sector). Pursuant to that authorization, the Sector has submitted an Operations Plan and Sector Contract entitled, "Amendment 2 to Georges Bank Cod Hook Sector Operations Plan and Agreement" (together referred to as the Sector Agreement), and a Supplemental Environmental Assessment (EA), and has requested an allocation of GB cod, consistent with regulations implementing Amendment 13. This notice provides interested parties an opportunity to comment on the proposed Sector Agreement prior to final approval or disapproval of the Sector Operations Plan and allocation of