

help to oversee and guide the aforementioned study. Interested companies should contact the Manufacturing & Services' Office of Trade Policy Analysis at the number listed above.

Dated: April 9, 2008.

**Matthew Howard,**

*Office of Trade Policy Analysis.*

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**BILLING CODE 3510-DR-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XG93**

#### Fisheries in the Western Pacific; Marine Conservation Plan for Pacific Insular Areas; Western Pacific Sustainable Fisheries Fund

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

**ACTION:** Notice of agency decision.

**SUMMARY:** NMFS announces the approval of a three-year marine conservation plan (MCP) for Pacific Insular Areas other than American Samoa, Guam, and the Northern Mariana Islands.

**DATES:** This agency decision is effective April 11, 2008.

**ADDRESSES:** Copies of the marine conservation plan are available from the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel. 808-522-8220, fax 808-522-8226.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, NMFS Pacific Islands Regional Office, 808-944-2207.

**SUPPLEMENTARY INFORMATION:** Under section 204(e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Secretary of State, with the concurrence of the Secretary of Commerce (Secretary) and in consultation with the Council, may negotiate and enter into a Pacific Insular Area fishery agreement (PIAFA) to allow foreign fishing within the U.S. Exclusive Economic Zone (EEZ) adjacent to any Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, which, by definition, does not include the State of Hawaii. Prior to entering into a PIAFA, the Council shall develop a three-year Marine Conservation Plan (MCP) providing details on uses for funds to be collected by the Secretary under the PIAFA. The Magnuson-Stevens Act

authorizes that any payment received under a PIAFA in support of conservation and management objectives in an MCP developed by the Council and, in the case of violations by foreign vessels occurring within the EEZ off any Pacific Insular Area (other than American Samoa, Guam, or the Northern Mariana Islands), any amounts received by the Secretary attributable to fines and penalties imposed under the Magnuson-Stevens Act, shall be deposited into the Western Pacific Sustainable Fisheries Fund for use by the Council.

The MCP to be approved by the Secretary must be consistent with the Council's fishery management plans, must identify conservation and management objectives (including criteria for determining when such objectives have been met), and must prioritize planned marine conservation projects. Although no foreign fishing is being contemplated at this time, the Council has developed an MCP for the Pacific Insular Areas here defined as the EEZ around Johnston and Palmyra Atolls, Kingman Reef, and Jarvis, Howland, Baker, and Wake Islands. These areas are sometimes known as the "Pacific remote island areas" or "U.S. island possessions in the Central Pacific Ocean."

At its 139th meeting held in October 2007, the Council approved its "Western Pacific Sustainable Fisheries Fund Marine Conservation Plan," dated August 29, 2007. The MCP contains seven objectives:

1. Support quality research and obtain the most complete scientific information available to assess and manage fisheries;
2. Promote an ecosystem approach in fisheries management, including reducing waste in fisheries and minimizing impacts on marine habitats and impacts on protected species;
3. Conduct education and outreach to foster good stewardship principles and broad and direct public participation in the Council's decision-making process;
4. Recognize the importance of island cultures and traditional fishing practices in managing fishery resources, and foster opportunities for participation;
5. Promote environmentally-responsible fishing and the utilization of sustainable fisheries that provide long-term economic growth and stability;
6. Promote regional cooperation to manage domestic and international fisheries; and
7. Encourage development of technologies and methods to achieve the most effective level of monitoring, control, and surveillance, and to ensure safety at sea.

The MCP also identifies major task areas that include data collection and monitoring, management, biological research and assessment, social economic research and assessment, policy development, protected species, public outreach, etc., within which projects are ranked in order of priority.

On November 6, 2007, the Council transmitted its MCP to NMFS (designee of the Secretary) for approval. This notice announces that NMFS has determined that the Council's MCP satisfies the requirements of the Magnuson-Stevens Act, and that NMFS has approved the MCP for the three-year period from April 11, 2008, through April 10, 2011.

Dated: April 14, 2008.

**Alan D. Risenhoover,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XA34**

#### Marine Mammal Stock Assessment Reports

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

**ACTION:** Notice; response to comments.

**SUMMARY:** As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). These reports for 2007 are now final and available to the public.

**ADDRESSES:** Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: <http://www.nmfs.noaa.gov/pr/sars/>. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.

Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037-1508.

**FOR FURTHER INFORMATION CONTACT:** Tom Eagle, Office of Protected Resources, 301-713-2322, ext. 105, e-mail [Tom.Eagle@noaa.gov](mailto:Tom.Eagle@noaa.gov); Robyn Angliss, Alaska Fisheries Science Center, 206-526-4032, email [Robyn.Angliss@noaa.gov](mailto:Robyn.Angliss@noaa.gov); Gordon Waring, Northeast Fisheries Science Center, email [Gordon.Waring@noaa.gov](mailto:Gordon.Waring@noaa.gov); or Jim Carretta, Southwest Fisheries Science Center, 858-546-7171, email [Jim.Carretta@noaa.gov](mailto:Jim.Carretta@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal level (PBR), estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2007, and the revised reports were made available for public review and comment (71 FR 42815, July 28, 2006). The MMPA also specifies that the comment period on draft SARs must be 90 days. NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2007 are available.

**Comments and Responses**

During the comment period for the draft 2007 SARs, NMFS received letters from the Marine Mammal Commission, the Southwest Center for Biological Diversity, the Humane Society of the

United States, the Hawaii Longline Association, Sun Coast Calamari, and Prowler Industries. Each letter contained multiple comments.

Unless otherwise noted, comments suggesting editorial or minor clarifying changes were included in the reports. Such editorial comments and responses to them are not included in the summary of comments and responses below. Other comments recommended development of Take Reduction Plans or initiation or repetition of large data collection efforts, such as abundance surveys, observer programs, or other mortality estimates. Comments on actions not related to the SARs (e.g., convening a Take Reduction Team or listing a marine mammal species under the Endangered Species Act (ESA)) are not included below. Many comments recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in previous years. NMFS' resources for surveys, observer programs, or other mortality estimates are fully utilized, and no new large surveys or other programs may be initiated until additional resources are available or until ongoing monitoring or conservation efforts can be terminated so that the resources supporting them can be redirected. Such comments on the 2007 SARs and responses to them may not be included in the summary below because the responses have not changed.

In some cases, NMFS' responses state that comments would be considered for, or incorporated into, future revisions of the SAR rather than being incorporated into the final 2007 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR suggests a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting prior to incorporating the change.

*Comments on National Issues*

*Comment 1:* Fishery-related mortalities determined from strandings should be included in reports of total annual mortality for a stock and reported consistently within and between SARs.

*Response:* Mortality determined from stranded animals cannot necessarily be used or reported in a consistent manner. In some cases, stranded marine mammals with evidence of interaction with fishing gear occur when and where the death could have resulted from observed fisheries. In other cases, there

is no observed fishery that could have caused the death. For the former cases, the stranded animal should be included in the expansion of observed take to an annual estimate of mortality for the fishery. These mortalities determined from strandings should not be included in the mortality estimates. In the latter cases, the stranded animal could not have been included in an estimated take, and these should be reported in the SARs. Mortality documented through a stranding program represents a minimum estimate (at least that many deaths occurred) because some marine mammals that die off shore do not subsequently strand.

*Comment 2:* All regions should err on the side of precaution when assessing serious injuries of marine mammals, stock status, and assigning "undetermined" PBR levels for stocks.

*Response:* NMFS uses appropriate caution in preparing the reports and discusses the draft reports with regional SRGs prior to public review.

*Comment 3:* The quantity and quality of data on fishery-related mortality continue to be inadequate for a number of marine mammal stocks. There is concern that the SARs tend to lag approximately two years behind in incorporating available observer bycatch data. It is imperative that SARs use the most recently available data in making these determinations.

*Response:* NMFS is aware there is a delay between the time data are collected and when the resulting estimates are available for use in the SARs. Because these data may form the basis for management actions that affect constituents as well as marine mammals, NMFS subjects the results to stringent review, an important step requiring additional time, before including the latest results in the SAR.

*Comment 4:* Survey methods could be improved further by the use of acoustic, tagging, and genetics tools to complement standard survey methods, which will in turn improve the statistical confidence in survey data and the statistical power of the analytic approaches used to derive stock size, trends, and efficacy of take reduction actions.

*Response:* Surveys routinely include collection of information such as recommended in the comment. The amounts of additional information, as well as the extent and intensity of surveys, are subject to limitation due to resources.

*Comment 5:* NMFS should work with Federal and state fisheries management agencies and industry to develop a funding strategy to support stronger observer programs for collecting data on

incidental mortality and serious injury. This would include training and other support for stranding response teams that would lead to greater certainty about the cause of strandings and unusual mortality events.

*Response:* NMFS established a National Observer Program in 1999 to combine program-specific observer effort for efficiency and to promote sustainable funding for a comprehensive marine resource observer program. The National Observer Program has been working with fishery management agencies and the fishing industry to meet these objectives and will continue to do so. The National Observer Program, in coordination with all six NMFS regions, has initiated development of a National Bycatch Report to compile species- and fishery-specific bycatch estimates for fish, marine mammals, sea turtles, and sea birds. This initiative will incorporate the development of fishery improvement plans to improve the collection of bycatch data and bycatch estimation methodologies. These improvement plans will also provide a comprehensive assessment of resources required to improve bycatch in U.S. commercial fisheries.

*Comment 6:* NMFS should build on recent advances in tag technology, as used by the Tagging of Pacific Pelagics program, to better understand aspects of population dynamics that surveys alone cannot reveal.

*Response:* As noted in the response to comment 4, NMFS includes additional information in the analysis of marine mammal populations to the extent resources allow.

*Comment 7:* Methods for identifying strategic stocks should be consistent between the NMFS regions.

*Response:* The guidelines for preparing marine mammal stock assessment reports promote reasonable consistency in determinations; however, these guidelines also allow some level of flexibility to account for stock-specific circumstances when insufficient information results in uncertainty.

*Comment 8:* The planned joint SRG meeting should address the development of a more effective means of assessing trans-boundary stocks and the effects of human activities on them.

*Response:* The joint SRG meeting included a lengthy discussion of trans-boundary issues. If the SRGs make joint recommendations, NMFS would use these recommendations in revising its guidelines for preparing SARs.

*Comment 9:* A consistent process for incorporating non-fishery sources of

mortality in the SARs should be developed.

*Response:* NMFS has incorporated research-related mortality, as appropriate, in SARs and is exploring alternatives for addressing taking incidental to activities other than commercial fishing, which will account for mortality and serious injury incidental to these activities.

*Comment 10:* More than 45 stocks cannot be adequately assessed because of insufficient data on stock status and trends, mortality, or both. A concerted effort should be made between regions to use a consistent approach to determine when available data are sufficient to calculate the PBR levels and estimate mortality.

*Response:* As noted in the response to comment 7, related to determining status of the stocks, the guidelines are designed to promote general consistency and leave flexibility to address case-specific circumstances. Appropriate levels of consistency were included in discussions at the recent joint SRG meeting; however, clear agreements on a need for a more prescriptive approach for the guidelines was not apparent.

#### *Comments on Alaska Regional Reports*

*Comment 11:* The inclusion of research-related mortality is a welcome addition to the SARs, and continuation of such reporting is encouraged.

*Response:* Comment noted.

*Comment 12:* The Alaska region needs to devote resources to obtaining up-to-date and reliable estimates of subsistence hunting of pinnipeds, particularly ice seals; data for some stocks has not been updated since 2000.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 18). NMFS has insufficient resources to obtain up-to-date estimates of subsistence hunting of pinnipeds and will retain old information, with appropriate dates and caveats if necessary, to document the extent of knowledge on past harvest.

*Comment 13:* Previous stock assessments have provided point estimates for Alaska Native subsistence kills as well as upper and lower estimates based on the bounds of confidence. These data are no longer provided. This practice should be reinstated.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 9). These data are not available for most stocks, and, for the stocks where the information is available, the reliability is unknown. More details on

information summarized in the SARs is available in the literature cited in each SAR.

*Comment 14:* Data should be presented in a manner that reflects a more precautionary approach for the Steller sea lion, western U.S. stock. A graphic suggesting an overall increase in stock abundance masks a 19 percent decline in the western Aleutian range.

*Response:* Steller sea lion abundance data are presented in Figure 2 and illustrate the dynamics of three portions of the stock over the past 15 years. Abundance of smaller portions of the range are available in the literature cited in the SAR.

*Comment 15:* The PBR level for the Steller sea lion, western U.S. stock, should be listed as "undetermined" because human-related causes of mortality are a plausible causative factor for a decline, even if not a direct mortality.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 8). NMFS disagrees that the PBR level for the Steller sea lion, western stock, should be "undetermined" because the stock, while at a low level relative to historical abundance, is sufficiently large to sustain some level of human-caused mortality and because recent data from 2002, 2004, and 2006 indicate that the population may have stabilized, thus reducing the need for this precautionary interpretation.

*Comment 16:* Additional observer coverage is needed for the Alaska Peninsula and Aleutian Islands salmon drift gillnet fishery and other gillnet fisheries that are likely to interact with the Steller sea lion, western U.S. stock.

*Response:* The NMFS Alaska Region is responsible for implementing observer programs in the Alaska state fisheries and is rotating this program through various Alaska state fisheries as resources allow. To date, this program has implemented observer programs in the Prince William Sound set and drift gillnet, South Unimak drift gillnet, Cook Inlet set and drift gillnet fishery, and the Kodiak Island set gillnet fisheries. In 2007 and 2008, and with the support of the Alaska SRG, the Alaska Region is focusing on implementing an observer program for the Yakutat Bay gillnet fishery due to concerns about potential harbor porpoise and humpback whale serious injury and mortality. Once the Yakutat program is completed, the next highest priorities for observation in Alaska state-managed fisheries are the salmon drift gillnet and purse seine fisheries in Southeast Alaska.

*Comment 17:* Summaries of self-reported mortalities from commercial fisheries in Alaska should be reinstated.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 7). NMFS no longer includes these data in the body of the SARs because the data are unreliable and because the number of reports has declined dramatically in recent years. The data are provided in an appendix to the SARs as additional information.

*Comment 18:* NMFS is encouraged to consider a more real-time harvest monitoring program for the Steller sea lion, western U.S. stock. There is concern regarding a slightly upward trend in subsistence harvest of this stock which is approaching the PBR level.

*Response:* NMFS agrees in general that levels of human-caused serious injury and mortality approaching PBR are of concern; however, the trend in the subsistence harvest is not of concern. In the early 1990s, subsistence take of Steller sea lions, western, U.S. stock, was more than double the current levels. In the late 1990s, the annual harvest level decreased to less than 200 and was about 200 in the last 3 years reported. A more real-time harvest monitoring program is unnecessary at this time because harvest levels are reasonably consistent from year to year.

*Comment 19:* Information on age and sex composition should be included in the section on Subsistence Harvest for the Steller sea lion, western U.S. stock to aid SRGs in advising NMFS on issues of uncertainty relative to mortality of animals in certain age and sex classes.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 12). NMFS has eliminated this information from the SARs upon consultation with the Alaska SRG because its inclusion is of little value without modeling to show the importance of the information in the context of the stock's population dynamics. NMFS refers the reader to the cited literature if additional information is needed.

*Comment 20:* Given the variability in population trajectories within portions of the stock range, NMFS should consider viewing management actions for portions of the Steller sea lion, eastern U.S. stock, rather than basing them on the trajectory of the stock as a whole.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 14). The prohibitions on take in the MMPA apply

to individual animals; thus, the management focus applies smaller than the total stock. However, the SAR reports values at the stock level. Additional details regarding substock population dynamics are available in the draft revised recovery plan for Steller sea lions (available on the Internet: <http://www.fakr.noaa.gov/protectedresources/stellers/recovery.htm>).

*Comment 21:* Table 4 for the Steller sea lion, eastern U.S. stock, should be updated with counts post-2002.

*Response:* New data on the eastern U.S. stock are not available for every year at every site. Some counts from 2002 are currently being used because that was the last year that the entire region was surveyed for eastern Steller sea lions. NMFS will review available information to determine whether an update can be made and, if an update is appropriate, will include new information in the draft SARs for 2008.

*Comment 22:* The PBR level for the Northern fur seal should be listed as "undetermined" because there is no net productivity in a declining stock.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 8 and 15). NMFS disagrees that the PBR level for the northern fur seal should be listed as "undetermined" because the stock, while at a low level relative to historical abundance, is very large and can sustain some level of human-caused mortality.

*Comment 23:* NMFS should work with co-management partners to establish biologically meaningful stock boundaries for harbor seals in Alaska and incorporate these boundaries for prospective harbor seal stocks into the 2008 SARs. A complete revision of harbor seal stocks and recommendations regarding stock structure based on new genetic information is awaited, and further sub-division of these stocks is encouraged.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 16). As in past comments on the SARs, NMFS continues its commitment to work with its co-managers in the Alaska Native community to evaluate and revise stock structure of harbor seals in Alaska.

*Comment 24:* Both the Beaufort and Chukchi stocks of beluga whale should be updated and considered for strategic status due to harvest-related and incidental mortality.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 21). The

SARs for these stocks will be updated in 2008, and this comment will be considered at that time.

*Comment 25:* The change in PBR level to "undetermined" for beluga whale, Cook Inlet stock, is supported.

*Response:* Comment noted.

*Comment 26:* Oil and gas exploration should be added to the list of potential habitat concerns for the beluga whale, Cook Inlet stock.

*Response:* NMFS will update this section in the draft SAR for 2008.

*Comment 27:* The population estimate for the killer whale, Northern Resident stock, should be updated. NMFS should work closely with the Canadian government to obtain information on fishery-related mortality data given the low PBR level (2).

*Response:* The SAR is next scheduled for an update in 2008, for the 2009 SARs, and this comment will be considered at that time.

*Comment 28:* The Pacific white-sided dolphin, North Pacific stock SAR has not been updated, and the population estimate is based on surveys from 1990. NMFS should obtain current abundance estimates, and observers should be assigned to the fisheries that have a likelihood of interacting with this stock. It is inappropriate to reclassify this stock as non-strategic.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 26 and 27). NMFS agrees that the abundance estimate is old however, resources do not yet allow NMFS to obtain a new estimate. Fisheries that overlap with this stock are observed, sometimes with high levels of coverage, and no serious injuries or mortalities have been observed. In addition, no other source of information (e.g., stranding data) indicates that incidental mortalities are occurring. Accordingly, this stock should not be designated as "strategic" despite uncertainty about the abundance estimate.

*Comment 29:* The harbor porpoise, southeast Alaska stock, is appropriately classified as strategic; the PBR level should be "undetermined".

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 8 and 28). NMFS will consider whether the PBR level should be set as "undetermined" during the revisions made for the 2008 SARs.

*Comment 30:* NMFS should collect current abundance data for the harbor porpoise, southeast Alaska stock, rather than re-analyze data from 10 years ago.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 28). At this time, a re-analysis of past survey data is the best available information for the southeast Alaska stock of harbor porpoise. NMFS conducted surveys in southeast Alaska in 2006 and 2007 and will incorporate results from these surveys when estimates have been completed and reviewed.

*Comment 31:* Dall's porpoise, Alaska stock, should be listed as a strategic stock because the abundance data are outdated, and NMFS can neither estimate a minimum population or a PBR level.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comments 26 and 30). Although the abundance data are old, the last abundance estimate was very high. Because many fisheries that overlap with this stock are observed and the level of annual take is very low, it is not appropriate to list this as a strategic stock.

*Comment 32:* The draft SAR for gray whales, Eastern North Pacific stock, does not incorporate recently published genetic information indicating that pre-exploitation population size of the gray whale was substantially higher than current estimates. (Alter, Rynes, and Palumbi. 2007. DNA evidence for historic population size and past ecosystem impacts of gray whales. Proceedings of the National Academy of Sciences 104 (38): 15162–15167). In light of this information, the current population of gray whales is less than 60 percent of its historic population and should properly be declared depleted.

*Response:* The paper by Alter *et al.* was published after the draft reports were completed and distributed to the SRGs for independent peer review prior to public review. Therefore, the information from that paper was not included. The next revision of the gray whale SAR will include a discussion of the results presented by Alter *et al.* NMFS is evaluating the information presented by Alter *et al.* to see if future action regarding the status of the Eastern North Pacific gray whale stock is warranted. The method used by Alter and Palumbi (and previously by Roman and Palumbi) is controversial. Many scientists, including the International Whaling Commission (IWC) Scientific Committee, have questioned the results and conclusions in Alter *et al.* (e.g., Palsboll *et al.*, 2008).

The lower range of the confidence interval in Alter *et al.* is consistent with a historic abundance of about 30,000

whales each for the western and eastern North Pacific stocks of gray whales. An abundance of 30,000 gray whales in the Eastern North Pacific stock is well within the confidence limits for estimates of carrying capacity reported by Wade (2002). Accordingly, for the Eastern North Pacific stock of gray whales, the estimate of historic carrying capacity based upon the genetic analysis in Alter *et al.* is reasonably consistent with estimates of current carrying capacity based upon Wade's analysis of abundance surveys.

Finally, as stated in a legislative proposal submitted to Congress in 1992, NMFS generally relies on current carrying capacity, absent human exploitation, to determine OSP, rather than trying to reconstruct potential carrying capacities at some time in the distant past. NMFS uses current carrying capacity in stock assessment as part of managing marine mammal-fishery interactions using the PBR system. The application of the PBR system for managing marine mammal-fishery interactions implicitly incorporates environmental conditions and their associated implications for carrying capacity over the near term (e.g., one to three decades).

NMFS' use of current carrying capacity in analyses supporting management is consistent with approaches used elsewhere. For example, IWC quotas for native subsistence hunts on both eastern North Pacific gray whales and for the Bering-Chukchi-Beaufort stock of bowhead whales are set as a function of current (not historic) carrying capacity. For IWC's harvest quotas, current carrying capacity refers to the maximum number of animals the environment can support or has supported within the last 150 years.

*Comment 33:* Data on fishery-related mortality in the gray whale, eastern North Pacific stock, should be updated since 2003. Both gray whale and humpback whale, central North Pacific stock, SARs should include evidence from stranded or free-swimming seriously injured animals in minimum estimates of mortality and serious injury.

*Response:* NMFS updated only a portion of the gray whale SAR in 2007 and will conduct a thorough update in the draft SARs for humpback whales and gray whales in 2008.

*Comment 34:* Table 35 of the gray whale, eastern North Pacific stock, should clarify whether harpooned whales are included in the "struck and lost" section on native hunting or not.

*Response:* NMFS updated only a portion of the gray whale SAR in 2007

and will conduct a thorough update in the draft SARs for 2008. We do not know if the harpooned whales included in the table were also included in the "struck and lost" estimates included in the Subsistence/Native Harvest section of the SAR. The stuck and lost estimate in that section was obtained from reports of aboriginal subsistence harvest in Russian waters, and the gray whales stranded or were observed in CA.

*Comment 35:* The humpback whale, western North Pacific stock, SAR should not provide conclusions about the adequacy of published literature without citing a source more definitive than "generally believed". This statement should be supported or removed.

*Response:* The final SAR was changed to note that the estimate is negatively biased because only a portion of the range was surveyed.

*Comment 36:* NMFS should declare all the ice-dependent seals under its jurisdiction to be strategic stocks based on observed and projected impacts of sea-ice loss on ice-dependent pinnipeds.

*Response:* "Strategic stocks" are defined as those where the level of human-related serious injury or mortality is greater than the PBR level, or as a stock listed as "threatened" or "endangered" under the ESA, or as "depleted" under the MMPA. None of the ice seal species meet the requirements of the definition.

*Comment 37:* The continuing lack of data from Arctic and Bering Sea species, particularly, ice-breeding seals, is noteworthy because major population changes are expected to occur as a result of global climate change. More information on the impact of climate change should be included in the SARs.

*Response:* Each of the SARs for ice-breeding seals contains a notation that loss of sea ice due to climate change is a habitat concern. One of the major strengths of the SARs is their brevity so that the status of all marine mammal stocks in a region can be included in a single document. To expand each SAR to fully discuss all potential threats or other issues would eliminate this benefit. Each SAR references documents reporting the details of information summarized in the SAR.

*Comment 38:* Yakutat belugas are genetically and geographically isolated from Cook Inlet belugas; therefore, they should be designated a separate stock and declared "depleted" given their small population size.

*Response:* In 2007, NMFS conducted a status review for Cook Inlet beluga whales and proposed to list the Cook Inlet population as "endangered" under the ESA (72 FR 19854, April 20, 2007).

In that proposed rule, Cook Inlet beluga were considered separate from the Yakutat beluga group. Should that proposed action become final, NMFS would review the depletion determination for the Cook Inlet beluga whale stock and would revise the depletion designation and SAR as appropriate, including the status of beluga whales found in Yakutat Bay.

*Comment 39:* The notice announcing availability of the draft SARs incorrectly refers to the "western" North Pacific stock of gray whale as being within its optimum sustainable population. Also, the eastern Pacific stock is now properly considered depleted.

*Response:* The reference to the "western" North Pacific stock was an error in NMFS notice reported in the **Federal Register**; it should have referred to the "eastern" North Pacific stock. NMFS disagrees that the eastern North Pacific stock should be considered "depleted", as available information on the current dynamics of the stock indicate that it is within its optimum sustainable population, and likely near it's carrying capacity. Also, see the response to Comment 32.

*Comment 40:* The Minerals Management Service 2007–2012 plan for outer continental slope oil and gas lease sales, which opens right whale critical habitat to oil leasing in 2011, represents a significant threat to the habitat of the North Pacific right whale, eastern North Pacific stock. The SAR should be modified to reflect this known threat to the habitat.

*Response:* NMFS will update the habitat section in the 2008 SAR.

#### *Comments on Atlantic Regional Reports*

*Comment 41:* Efforts to define latitudinal boundaries above or below which pilot whales may be assigned to the correct species would avoid continued, inappropriate, lumping of the species. We renew our request that NMFS continue its focal efforts to define the boundaries of short-finned and long-finned pilot whales which are taken in multiple fisheries and yet are managed with a single PBR as though they are a single stock. As has been presented to several take reduction teams, this sort of analysis should be discussed, or at least alluded to, in the SAR so that reviewers understand that efforts are underway to appropriately separate the two stocks. See the Alaska SAR for harbor seals for an example on how a region can discuss ongoing efforts. *Response:* As noted in the comment, NMFS is continues to conduct research to distinguish between short-finned and long-finned pilot whales in the Atlantic Ocean, and progress in this effort has been reported

in different fora. Results remain preliminary and will be included in the SARs upon peer-review of results. The SARs currently state that such research is underway; therefore, an additional discussion of the research would be unnecessary.

*Comment 42:* There have been increasing reports over the last several years of shooting bottlenose dolphins in the Gulf of Mexico. It would be helpful to address this in the appropriate SARs (e.g., coastal or Bays, Sounds and Estuaries).

*Response:* SARs for the Gulf of Mexico bottlenose dolphin, Coastal stocks and Bays, Sounds and Estuaries stocks, note gunshots as a source of mortality. The frequency of mortality for each type of human-related mortality is currently not given in these SARs, but we will evaluate whether this can be done in an efficient manner for future revisions.

*Comment 43:* The 2007 Atlantic Ocean SAR does not cite potential risk to Kogia species from sonar sound, even though data in published literature support concern that military sonar may affect Kogia much like it affects beaked whales, and concern has been expressed about the potential effects on Kogia of oil and gas industry activities in the Gulf of Mexico. We believe that, to be complete, NMFS should describe in the SARs those sources of undetermined effect for which there is a reasonable basis for concern, even if conclusive evidence of effect is not yet available.

*Response:* The two Atlantic Kogia SARs were revised to note potential, although undocumented, concerns from such sources.

*Comment 44:* NMFS needs to better update bottlenose dolphin stock structure in the Gulf of Mexico. Given the difficulty of in ascribing fisheries-related mortality to an individual stock, all stocks should be designated as strategic.

*Response:* Research concerning Gulf of Mexico bottlenose dolphin stock structure continued in 2007, and the following fieldwork was conducted:

- (1) Winter and summer aerial surveys to estimate the abundance of the northern and eastern coastal stocks;
- (2) A summer large-vessel abundance/biopsy survey of continental shelf waters to estimate the abundance of the Continental Shelf Stock and to provide samples for genetic stock structure studies; and
- (3) A summer photo-identification and biopsy survey of Choctawhatchee Bay, FL (one of 33 Gulf of Mexico Bay, Sound and Estuarine stocks) to estimate the abundance and provide samples for genetic stock studies. Data/samples from

all of these field efforts are currently being analyzed. Additional fieldwork is necessary to update all of the Gulf Bay, Sound and Estuarine stocks and Coastal stocks.

Results from these efforts will be included in SARs when the data are fully analyzed and subjected to peer review.

*Comment 45:* Given the increasing trend of bycatch, Atlantic white-sided dolphins should be designated as strategic.

*Response:* Although incidental mortality and serious injury have increased in recent years, the estimated total remains approximately 40 percent below PBR (379). The status of this stock has been reviewed with the Atlantic SRG, and based, on those discussions, a non-strategic status was deemed to be appropriate. NMFS has convened a trawl take reduction team to reduce incidental mortality and serious injury of white-sided dolphins and other small cetaceans.

*Comment 46:* Abundance and take estimates for short and long-finned pilot whales should be separated based on recent genetic and survey data. These stocks should both be considered strategic.

*Response:* Genetic sampling and analyses are ongoing. At this time the data are insufficient to allocate abundance survey sightings or un-sampled bycatch to species.

The status of these stocks has been reviewed with the Atlantic SRG, and, based on those discussions, a non-strategic status was deemed to be appropriate. To deal with the uncertainty regarding species identification, identical abundance and bycatch estimates were assigned to each species.

#### *Comments on Pacific Regional Reports*

*Comment 47:* The draft SAR conflates genetically-distinct false killer whale stocks. There is no scientifically-recognized Hawaii stock of false killer whales. NMFS' approach is not consistent with the best available scientific information.

*Response:* NMFS agrees the Hawaii stock of false killer whales includes two genetically distinct populations found within the Hawaiian Exclusive Economic Zone (EEZ). Insufficient information on the distribution of each population was available at the time of draft SAR preparation to separate these two populations into different stocks. The draft SAR states that for management purposes, NMFS has provisionally lumped these two genetically distinct groups of false killer whales in the EEZ. NMFS also

recognizes a stock of false killer whales near Palmyra Atoll.

The report also notes that NMFS continues to collect and analyze information to help resolve population structure of false killer whales in the North Pacific Ocean. At the most recent SRG meeting, NMFS proposed a revision of stock structure for false killer whales within the Hawaiian EEZ and anticipates incorporating this proposal into the draft 2008 reports.

NMFS disagrees the approach used in the false killer whale SAR is inconsistent with the best available scientific information. The SAR partitions abundance, PBR and mortality/serious injury to assess the impact of removals of false killer whales incidental to U.S. fisheries with the information available (stock boundaries outside the EEZ are unknown, abundance of false killer whales outside the EEZ is unknown, and mortality and serious injury incidental to foreign fisheries is unknown). The approach is consistent with the best available information, with NMFS' guidelines for preparing SARs, and with the MMPA.

*Comment 48:* Human-caused mortality estimates for blue whales should be updated to include a number of ship strike events documented in 2007.

*Response:* Human-caused mortality information included in the stock assessments represents data for the most recent five-year period for which data are available. At the time the 2007 draft stock assessments were written, the recent ship strike events had not occurred. Ship strike data for the previous calendar year 2006 were also not available to the authors at that time.

*Comment 49:* The SAR for short-finned pilot whales, CA/OR/WA stock, should be updated to report that a pilot observer program was implemented in this fishery in 2004 and that no pilot whale interactions have been observed in 95 fishing trips through early 2007. NMFS should also strike language from the stock assessment that assigns responsibility for 14 fishery-related pilot whale strandings between 1974 and 1990 to the squid purse seine fishery, while not providing evidence for the fishery-specific source of the mortalities.

*Response:* The report was updated to reflect the recent lack of pilot whale interactions in the squid purse seine fishery. There is well-documented historical evidence (cited in the stock assessment) of pilot whale interactions and mortalities resulting from interactions with this fishery, and while no recent interactions have occurred, the text on historical interactions is

included to give the reader perspective on past and current risks to the stock.

*Comment 50:* The long-beaked common dolphin stock assessment should be modified so that inter-annual variability in abundance estimates is adequately addressed. The stock has gone from "non-strategic" to "strategic" status, largely because of steep decline in the estimate of abundance for this stock, while the annual human-caused mortality has not changed significantly (from 11 animals to 17 animals in the draft stock assessment).

*Response:* The SAR notes the high inter-annual variability in abundance estimates for this stock.

*Comment 51:* Mortalities in the form of fishery-related strandings should be included in the table that summarizes fishery mortality for Pacific white-sided dolphins, CA/OR/WA stock.

*Response:* Table 1 of the stock assessment includes fishery-related strandings in the summation of mortalities although the specific fishery responsible for the mortalities is listed as unknown.

*Comment 52:* We trust that methodology to allow for species-specific management of mesoplodont beaked whales is being developed, rather than the current strategy of lumping six species under one management unit.

*Response:* NMFS agrees that finer scale resolution of stock management for these species is desirable. Unfortunately, field identification of most of these species is difficult, which prevents species-specific abundance estimates. Progress has been made with the identification of Blainville's beaked whales, and a stock-specific abundance estimate which appeared in the draft 2007 stock assessment.

*Comment 53:* NMFS should use a more precautionary approach in designating a strategic status for the CA/OR/WA stocks of pygmy and dwarf sperm whales, given the lack of abundance estimates and evidence of historic mortality.

*Response:* Pygmy and dwarf sperm whales occur only rarely in waters under the jurisdiction of the U.S. The fishery with which these stocks have interacted in the past is the CA/OR drift gillnet fishery, which has been subject to observer coverage since the early 1990s. No mortality of these stocks of marine mammals have been noted in recent years. In addition, a Take Reduction Plan has been prepared and implemented for the fishery to protect offshore cetaceans; presumably, these pygmy and dwarf sperm whales are deriving benefit from the plan even though the stocks are not driving the

need for the plan. Therefore, labeling these stocks as "strategic" would add no additional protection.

*Comment 54:* Provide clarification on whether or not estimates of sperm whale, CA/OR/WA stock, abundance are corrected for diving whales that were not sighted during surveys.

*Response:* Estimates are corrected for diving animals not seen during surveys. The stock assessment was revised to clarify this point.

Dated: April 15, 2008.

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Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service.  
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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### National Estuarine Research Reserve System

**AGENCY:** Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

**ACTION:** Notice of Public Comment Period for the Revised Management Plan for the Chesapeake Bay Maryland National Estuarine Research Reserve.

**SUMMARY:** Notice is hereby given that the Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce is announcing a thirty-day public comment period on the Chesapeake Bay Maryland National Estuarine Research Reserve Management Plan Revision.

The Chesapeake Bay Maryland National Estuarine Research Reserve has three sites; Monie Bay, Jug Bay, and Otter Point Creek. Monie Bay was designated as part of the National Estuarine Research Reserve in 1985 and Jug Bay and Otter Point Creek were designated in 1990 pursuant to Section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461. The reserve has been operating under a management plan approved in 1990. Pursuant to 15 CFR Section 921.33(c), a state must revise their management plan every five years. The submission of this plan brings the reserve into compliance and sets a course for successful implementation of