

U.S. Beaufort Sea, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 032706A]

**Notice of Availability of Final Stock Assessment Reports**

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

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

**SUMMARY:** NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). These reports for 2005 are now complete and available to the public.

**ADDRESSES:** Send requests for copies of reports or revised guidelines to: Chief, Marine Mammal 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 Tina Fahy, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802-4213.

**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, e-mail [Robyn.Angliss@noaa.gov](mailto:Robyn.Angliss@noaa.gov); Gordon Waring, Northeast Fisheries Science Center, e-mail [Gordon.Waring@noaa.gov](mailto:Gordon.Waring@noaa.gov); or Tina Fahy, Southwest Regional Office, 562-980-4023, e-mail [Christina.Fahy@noaa.gov](mailto:Christina.Fahy@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Stock assessment reports are available via the Internet at <http://www.nmfs.noaa.gov/pr/sars/>.

**Background**

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires 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 must contain information regarding the distribution and abundance of the stock, population growth rates and trends, 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 the 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.

**Comments and Responses**

The draft 2005 SARs were available for public review (70 FR 37091, June 28, 2005) for a 90-day comment period, which ended on September 26, 2005. NMFS received letters from two Federal agencies (Marine Mammal Commission (Commission) and U.S. Geological Survey), one individual, and three organizations (Alaska Native Sea Otter and Steller Sea Lion Commission, Hawaii Longline Association, and Marine Conservation Alliance).

The U.S. Geological Survey had no comments. The Commission's comments were directed to national issues and to individual regional reports. All other comments were directed toward regional reports.

Unless otherwise noted, comments suggesting editorial or 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 additional survey effort, observer programs, or Take Reduction Plans. Comments on the need to develop additional Take Reduction Plans are not

related to the SARs; therefore, these comments are not included below. Comments recommending additional data collection have been addressed in recent years. Responses to these comments indicated that NMFS' resources for surveys or observer programs were fully utilized, and no new large surveys or observer programs may be initiated until additional resources are available. Such comments on the 2005 SARs 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 in future revisions of the SAR rather than being incorporated into the final 2005 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 results in 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*

The Commission noted that the SARs addressed a number of issues inconsistently and recommended NMFS review the assessment issues, develop appropriate, precautionary policies for addressing them, and take the steps necessary to ensure consistent application of the policies among all regions and for all stocks of marine mammals.

*Comment 1:* NMFS should ensure that information provided within the SARs is consistent among the contributions from various regional offices. For example, the summary tables for SARs from different regions should compile information in the same manner and should include not only estimates of populations size and mortality rates, but also the variances of those estimates.

*Response:* NMFS agrees there should be a certain level of consistency in the tables, but there may be important differences in some regions that warrant inclusion in the summary tables. For example, subsistence harvest results in substantial mortality for some stocks in the Alaska region, and such harvests do not occur in the Atlantic or Pacific regions. The Alaska SARs, therefore, include a column in the summary table for subsistence mortality, and this column does not appear in the other two regional SARs. Similarly, the Atlantic and Pacific SARs include a column to identify which Science Center within NMFS produced the reports because four Science Centers (Alaska,

Northwest, Pacific Islands, and Southwest) contribute to the Pacific reports, and two Science Centers (Northeast and Southeast) contribute to the Atlantic reports. All of the reports in the Alaska region are prepared by the Alaska Fishery Science Center; therefore, such a column is not necessary for this regional report. Beginning with the 2006 SARs, NMFS will ensure that there is a consistent core of information. However, other information in these tables would be optional for the authors to include.

*Comment 2:* For population estimates, it would be useful to include [in the summary table] the year of the most recent survey and interval between repeat surveys for stocks that are monitored on a regular basis.

*Response:* This history of surveys and estimates are included in the reports and will not be repeated in the summary table. The summary tables provide only certain key information, such as the stock identity, the statistics used to calculate the Potential Biological Removal (PBR) level, fishery and total human-caused mortality, and the status of the stock.

*Comment 3:* The Commission reiterated a comment the agency had submitted in 2004 that in the absence of any information on sources of mortality, and without guidance from the SRGs, the precautionary principle should be followed, and the default stock status should be strategic until information is available to demonstrate otherwise. For example, all four Arctic seal species in Alaska waters are classified as non-strategic although very little information is available for any of these species, several of them are subject to substantial subsistence harvests, and they are all likely to be especially vulnerable to ongoing climate changes in the Arctic. In contrast, all stocks of beaked whales are classified as strategic even though the information on their status is similarly limited, they may also be vulnerable to climate change, and they may be sensitive to anthropogenic sound.

*Response:* NMFS has consistently followed its guidelines in these examples even though the ice seals are classified as non-strategic whereas the beaked whales are classified as strategic. For species or stocks that are not listed as threatened or endangered, designated as depleted, or declining and likely to become depleted, threatened or endangered, the status (strategic or non-strategic) is determined by the level of human-caused mortality compared to the stock's PBR. The effects of environmental or climate variability do not affect its status under the MMPA

unless the threat is sufficient to designate them as depleted, threatened or endangered.

NMFS and the Alaska SRG discussed the status of ice seals, and these discussions resulted in an agreement that a strategic status for ice seals is not warranted at this time because the general experience of the experts in these discussions suggested that human-caused mortality was likely small related to the stocks' size (thus, mortality would not likely exceed PBR if abundance and total mortality of these stocks were estimated). Consequently, the ice seals were designated non-strategic. The status of ice seals was discussed at the January 2006 meeting of the Alaska SRG, and the designation is being reviewed for the 2006 SARs.

On the other hand, the authors of the beaked whale SARs, in consultation with the SRGs, noted that reported mortality of beaked whales incidental to human activities could well be an underestimate, and total mortality may exceed PBR for these stocks. Therefore, the beaked whales were designated as strategic stocks.

*Comment 4:* A number of species of marine mammals are difficult to distinguish by visual observation in the field (e.g., dwarf and pygmy sperm whales, short- and long-finned pilot whales, and a variety of beaked whale species). NMFS has made progress using a variety of techniques to distinguish these animals and at present seems to rely on one or both of two approaches for estimating abundance of these animals: (1) Estimating a combined abundance for the entire group of species (e.g., pilot whales, dwarf and pygmy sperm whales, and beaked whales along the Atlantic coast), or (2) estimating minimum abundance of each species based on the limited information available (e.g., beaked whales in the Gulf of Mexico). NMFS should use a consistent approach for these similar situations.

*Response:* The approach used for beaked whales in the Gulf of Mexico will be discontinued in the 2006 reports. These reports will be prepared using approach (1) in the comment and will be consistent with other species that are difficult to distinguish in the field. When it becomes feasible to partition mortality and abundance by single stocks, NMFS will update the affected SARs accordingly.

*Comment 5:* For a variety of reasons, animals involved in entanglements, ship strikes, stranding, etc., often are identified only by broad taxonomic categories (e.g., "unidentified seal" or "unidentified whale"). NMFS currently uses a variety of approaches to estimate

serious injury/mortality rates for marine mammal stocks. In some cases, such as the western North Atlantic offshore stock of bottlenose dolphins, NMFS does not estimate serious injury/mortality if unidentified takes occur within a area of spatial overlap with other stocks. In other cases, such as the western North Atlantic stocks of pilot whales, a combined mortality estimate is derived for all species within a group. For stocks that generally are not difficult to distinguish, such as the western North Atlantic stocks of gray seals and hooded seals, mortality estimates often are based only on the identified animals, ignoring the potential contribution of unidentified animals to the true mortality.

*Response:* While recognizing the desire for consistency throughout the SARs, NMFS may need to approach such issues differently for individual species and/or stocks. Recent research efforts have focused on developing methods to differentiate between short-finned and long-finned pilot whales, as well as the bottlenose stocks, along the U.S. Atlantic coast to the degree our resources allow. In the 2006 draft short-finned and long-finned pilot whale SAR, strandings by species are indicated when this information is available, and the pygmy- and dwarf-sperm whale SARs will likewise be modified to reflect strandings by species when such information is available. In cases where it is not possible to determine which species or stock is involved, we include this information in all species or stocks SARs that may be involved.

*Comment 6:* The Commission repeated a comment from its letter with comments on the 2004 SARs and the updated guidelines regarding a provision in the guidelines indicating that in cases where mortality cannot be attributed to a specific stock, the mortality may be prorated based on the estimated stock abundances. The Commission recommended that NMFS develop alternatives to address such mortality in such a way that small, vulnerable stocks would not be subject to a disproportionate risk.

*Response:* NMFS responded to this comment in its notice of availability of final 2004 SARs (70 FR 35397, June 20, 2005) by saying NMFS modified the guidelines to require a discussion of the potential for bias in stock-specific mortality in each affected report. NMFS clarifies that the proration would not be based on total stock abundance, rather it would prorate mortality based upon the abundances of the affected stocks in the appropriate geographic area when sufficient information on stock abundance is available.

NMFS anticipates continuing to use such a proration in cases such as for false killer whales within and outside the Exclusive Economic Zone (EEZ) surrounding Hawaii (see response to Comment 8 for a more complete description of the approach). Such an approach does not increase the risk for a vulnerable stock and will continue to be used until there is sufficient information to assess stock structure and abundance of false killer whale occupying areas outside waters under the jurisdiction of the U.S. and the effect of fishery mortality from U.S. and other nations' fisheries on the affected stocks.

*Comment 7:* The Commission repeated another comment from its letter on the 2004 SARs and updated guidelines related to PBR for declining stocks. The Commission recommended NMFS set PBR for declining stocks at zero and to develop a precautionary approach to the management of declining stocks and apply that approach consistently.

*Response:* There were several comments on the 2004 SARs and revised guidelines related to PBR for declining stocks. NMFS responded to these comments saying, among other things, that zero may not always be the appropriate PBR for a declining stock. Furthermore, each situation where marine mammal stock abundances are declining has many case-specific attributes, and a consistent, precautionary approach (e.g., PBR = 0) may not fit each case. Therefore, NMFS will continue to address these situations on a case-by-case basis.

*Comment 8:* The Commission stated that NMFS seems to use two contradictory approaches for assessing the status of transboundary stocks. In the case of the Hawaiian stock of false killer whales, serious injury/mortality incidental to the Hawaii longline fishery is estimated for the portion of the stock that is found within the U.S. EEZ surrounding the Hawaiian Islands, and that mortality is compared to the PBR calculated for the population within that same EEZ. Mortality and serious injury in international waters are assumed to effect an undefined "international" false killer whale stock for which population size and mortality and serious injury are unknown. In the case of the harp seal in the Atlantic, which are harvested in large numbers in Canada and Greenland, mortality is estimated within the U.S. EEZ and compared to the total population size of harp seals in Canada.

*Response:* The Commission's choice of example illustrates the need to use different approaches in assessing the status of, including the effects of

human-caused mortality on, marine mammal stocks. In the case of false killer whales in the Pacific Ocean, the population structure within the entire ocean basin is unknown. However, NMFS has sufficient information to show that the animals occupying the Hawaiian EEZ, particularly those animals near the Hawaiian Islands, are from a different stock than animals occupying the Eastern Tropical Pacific Ocean and other international waters. Using the information available, including results of a survey of marine mammals within the Hawaiian EEZ, NMFS estimated the abundance and PBR for false killer whales in the area. NMFS also estimated U.S. fishery-related mortality and serious injury within the Hawaiian EEZ based upon data from the observer program on the portion of the pelagic longline fishery within the same area. Fisheries from other countries are not active within the EEZ; therefore, mortality and serious injury of marine mammals incidental to fishing within the EEZ is limited to those animals taken incidental to US fishing effort. Thus, the comparison of mortality and serious injury of false killer whales incidental to fishing within the EEZ to the PBR of this stock provides a reasonable assessment of the impact of incidental mortality and serious injury to the affected stock of false killer whales.

Within international waters, however, stock structure, abundance, and total fishery-related mortality and serious injury (of the combined US and international fishing effort) are unknown. Furthermore, with a requirement to produce SARs for only those stocks of marine mammals that occur in waters under U.S. jurisdiction and a limited budget for marine mammal assessment, NMFS is not likely to obtain the information to identify population stocks correctly and estimate the abundance of each stock in international waters. NMFS is able to estimate mortality and serious injury of false killer whales incidental to U.S. fishing effort. This limited information is insufficient to assess the potential impact of fishery-related mortality on the unidentified stocks of marine mammals occupying international waters. Therefore, NMFS uses the information available to the maximum extent feasible to comply with the requirements of MMPA section 117.

Harp seals in the Atlantic are in a very different situation. First, the harp seals in waters under US jurisdiction are primarily young males that seasonally occupy waters off New England and are part of the population from waters under Canadian jurisdiction. Estimates

of abundance and mortality of this population of ice seals are available in Canada, the U.S. and elsewhere. Harvest levels of harp seals in Canada and Greenland are established in collaboration with a working group of experts from an international organization (International Council for the Exploration of the Sea), which includes members from the U.S. The harvest levels are estimated using a model that is more sophisticated than the relatively simple PBR approach, which includes mortality and serious injury of harp seals incidental to U.S. fishing effort.

The approaches used in these two situations are, indeed, different. This difference reflects the differences in the biology and understanding of false killer whales on the one hand and harp seals on the other. The two approaches make use of the best scientific information available to assess the status of the affected stocks and the effects of human-caused mortality (including US fishery-related mortality and serious injury governed by MMPA section 118), and each has been discussed with the appropriate SRG as required by MMPA section 117. Even though these two approaches are different, and seemingly contradictory, NMFS considers the differences appropriate.

*Comment 9:* The Commission concluded their comments with two broad recommendations. First, noting that inconsistency in assessment and management of transboundary stocks may allow a level of mortality and serious injury that the affected stocks cannot withstand, the Commission recommended NMFS develop and implement an effective strategy for assessing mortality levels in transboundary stocks with priority given to those stocks that are harvested or known to interact significantly with domestic or international fisheries. Such a strategy would also require NMFS to conduct research to determine the boundaries of transboundary stocks and to estimate their population size, trend, mortality, and serious injury.

Second, after noting that in many instances the level of observer coverage was very low and that the resulting information may contain significant bias and error, the Commission recommended (in a reiteration of a comment the Commission made on the 2003 SARs) that NMFS establish standards for observer coverage and implement the changes needed to achieve those standards.

*Response:* NMFS agrees that the most reliable approach to governing interactions between marine mammals and commercial fishing (domestically

and internationally) includes having sufficient information to make fully informed decisions. Related to the first part of this comment, NMFS stated in its original guidelines (Barlow, et al., 1995. U.S. Marine Mammal Stock Assessments: Guidelines for Preparation, Background, and a Summary of the 1995 Assessments. NOAA Technical Memorandum NMFS-OPR-95-6.), "In transboundary situations where a stock's range spans international boundaries or the boundary of the U.S., the best approach is to establish an international management agreement for the species." The guidelines have been revised twice since 1995, and this statement has remained in place. The guidelines also include alternative approaches to address transboundary stocks when the information necessary for the best approach is not available.

In its response to the Commission's comments on the 2003 SARs, NMFS stated that the agency was preparing a document to identify the resource requirements for adequate protected species stock assessments, and the document would describe desired levels of data quality, quantity, and timeliness (69 FR 54262, September 8, 2004). The requirements document has been completed (Merrick et al., 2004. A Requirements Plan for Improving the Understanding of the Status of U.S. Protected Marine Species: Report of the NOAA Fisheries Task Force for Improving Marine Mammal and Turtle Stock Assessments. NOAA Technical Memorandum NMFS-F/SPO-63) and is available on the Internet at the following location: <http://www.nmfs.noaa.gov/pr/sars/>. In the requirements plan, NMFS describes the current (at the time of publication) state of the information for marine mammal and turtle stock assessment and includes an estimate of the resources (staff and survey time) required to achieve the new standards for improved stock assessment. No new major abundance surveys or observer program could be initiated until additional resources are available.

#### *Comments on Alaska Regional Reports*

*Comment 10:* Descriptions of the fisheries in the SARs are inconsistent and confusing. In some SARs, fisheries are described in the aggregate, while in other SARs, fisheries are listed separately by geography, gear type, and target species.

*Response:* SARs for some marine mammal stocks are routinely reviewed and updated every year, while SARs for other stocks are updated every 3 years or when there is substantial new information that must be added to the

SARs. Thus, the fishery definitions in the 2005 draft SARs have been updated for some stocks, but not for others. NMFS will address fishery descriptions for remaining stocks during the next 2 years.

*Comment 11:* The SARs use an inconsistent time period for observer data. For instance, in SARs for some stocks, observer data from 1999–2003 are used. For other stocks, a different time period is used, such as 1994–98 for the Pacific white-sided dolphin and 1990–96 data for Southeast Alaska harbor seals.

*Response:* SARs are revised on a rotating schedule, so not all SARs will include data from the same period of time. The SAR for the Pacific white-sided dolphin has not been updated in a few years; the most current data available during the last revision of that SAR was 1994–98. Similarly, the SAR for harbor seals, Southeast Alaska stock, is based upon the most current information from fisheries there. Also, see response to Comment 10.

*Comment 12:* It is not clear why observer data from 2004 were not used in the 2005 draft SARs.

*Response:* It takes approximately a full year to develop new, final SARs. The draft SARs for 2005 were prepared in fall of 2004; at that time, data for 2003 were the most current data available. Observer data for 2004 became available in 2005 and will be incorporated in the draft SARs for 2006, which are currently under preparation.

*Comment 13:* The largest component of the total mortality for Steller sea lions is the 14.5 mean annual mortalities in the Prince William Sound salmon drift gillnet fishery. These data are 14 years old. Not only are such data suspect because fishing practices have likely changed, but the population level of Steller sea lions in the Prince William Sound area has decreased, making interactions less likely. Further, Prince William Sound is on the edge of the western stock range, and some portion of the 14.5 animals are likely from the eastern Steller sea lion stock.

*Response:* While the observer data for Prince William Sound that resulted in the mean annual mortality rate of 14.5 Steller sea lions are dated, they remain the best information available on the level of take in this fishery and will be used in the analyses for the List of Fisheries (LOF) until better data on this fishery are collected. Due to funding constraints, the rotating observer program currently responsible for collecting data on marine mammal serious injury and mortality rates in state fisheries will only be able to observe fisheries approximately once

every few decades. Thus, NMFS continues to rely on dated information for a number of state fisheries when analyzing the total level of mortality and serious injury of marine mammals throughout Alaska.

*Comment 14:* There is a double-counting of mortalities in two instances where a single incidental mortality in a fishery is attributed to two stocks and results in two distinct mortalities. This double-counting is a problem for the humpback whale take in the Bering Sea/Aleutian Island that occurred incidental to the Bering Sea/Aleutian Island sablefish pot fishery, the killer whale take that occurred in the Bering Sea/Aleutian Island turbot longline fishery, and the killer whale take that occurred in the Bering Sea/Aleutian Island Pacific cod longline fishery. The estimated fishing mortality levels should be reduced by 50 percent.

*Response:* Because the humpback whale and killer whale mortalities occurred in an area where more than one stock of these species overlap, assignment of the mortalities to a single stock could not be accomplished for the 2005 draft SARs. There are two procedural options for assigning these mortalities: (1) Pro-rate the mortalities to each stock using the proportion of each stock in the area when there mortalities occurred, (2) assess the impacts of the mortality on each stock. Because option (1) requires information on relative abundance of each stock in the vicinity of the incidental mortality, and this information is not available, this approach cannot be pursued. Thus, the mortalities are included in the SARs for each stock. The report was revised to make it clear that the mortality information shows up in reports for both stocks and cannot be summed to estimate a total take level for all killer whale stocks.

*Comment 15:* NMFS stated in February 2005 that genetics of the killer whales taken incidental to the commercial fisheries would be analyzed. What are the results of that analysis?

*Response:* NMFS has completed the genetics analysis of the samples taken from killer whales that were killed incidental to fisheries from 1999–2003. The killer whale mortality in the Bering Sea/Aleutian Island flatfish trawl fishery was a resident killer whale. Both killer whale mortalities in the Bering Sea/Aleutian Islands pollock trawl fishery were transient killer whales. The killer whale mortality in the Bering Sea/Aleutian Island Pacific cod longline fishery was a resident killer whale. No samples were taken from the killer whale mortality that occurred incidental

to the Bering Sea/Aleutian Island turbot longline fishery; thus, the impact of this mortality will be assessed as if it came from either stock. The killer whale SARs will be updated with the new genetics information in 2006.

*Comment 16:* The Perez document on which the take estimates are based uses catch as an approximation of effort. This is unfounded, as effort can be expressed as days fished, particularly for those fisheries with a high level of observer coverage. The North Pacific Fishery Management Council (Council) and the Scientific and Statistical Committee of the Council recommended that NMFS consider using direct effort data in lieu of catch. NMFS has been doggedly unresponsive.

*Response:* Information on effort as measured by the number of hooks, number of hauls, days fished, etc. is available for vessels that are observed. However, there is no such measure for unobserved vessels. Because all vessels must report catch, that is the only data that can be used, for all vessels, seasons, and areas, to determine relative levels of effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS will consider modifying the analytical approach.

*Comment 17:* The commenter states that 94 percent of the Pacific cod longline harvest comes from observed vessels, with 66 percent of the catch in sampled hauls. According to the 2000 biological opinion for the groundfish fishery, this fishery is 110 percent observed. How can it be the case that the observer coverage provided in the SARs be 27–80 percent?

*Response:* NMFS has reviewed the 2000 biological opinion and believes that the table to which the commenter is referring is Table 6.4. The table in the biological opinion presents effort calculated based on the total groundfish catch by the vessel when an observer was on board, regardless of how many hauls on that vessel were randomly selected as being “monitored” by the observer. In contrast, the effort used in calculations of estimated marine mammal serious injury/mortality is based on the percent of total catch in the randomly selected “monitored” hauls. Thus, because the effort was calculated differently for the purposes of this table and for the calculations of serious injury/mortality levels, it is to be expected that there are differences in the percent effort using the two different approaches. In some situations in that table, there is a mismatch of the data between the two databases that results in an apparent 110 percent coverage; there is a note at the bottom of the table

(marked with an asterisk) to address this problem.

*Comment 18:* SARs for various stocks of marine mammals show inconsistent observer coverage ranges. For instance, the 2005 SAR for Pacific white-sided dolphins indicates that the coverage for the aggregated Bering Sea/Aleutians Islands (BSAI) longline fishery is 27–80 percent. However, for other stocks (Steller sea lion, western stock), the Pacific cod longline fishery is identified as having 29.6–percent observer coverage.

*Response:* The SAR for Pacific white-sided dolphins has not been updated since 2003; at this time, the SAR for that species includes information on the combined groundfish longline fisheries and states that the observer coverage ranged between 27–80 percent during the period 1994–1998. The SAR for the western stock of Steller sea lions covers the period 1999–2003, and provides information on the observer coverage for the Pacific cod longline fishery separate from other types of groundfish longline fisheries. Because the SARs for these species differ in what years of data are included, and in how the fisheries are aggregated, the levels of observer coverage cannot be directly compared.

*Comment 19:* How does the longline fleet go from being in the range of 80 percent observed for the aggregate fisheries to less than 30 percent observed for the BSAI turbot longline fishery? Which BSAI longline fishery was observed at 80 percent?

*Response:* In 1990, 80 percent of the catch for the aggregated Bering Sea/Aleutian Islands groundfish longline was observed. Because data are not available to determine the target fishery in 1990, it is not possible to determine observer coverage for different components of the longline fishery in that year. As SARs are updated, these old data will be replaced with current information on levels of observer coverage.

*Comment 20:* The BSAI turbot longline fishery should not be included in the tables in the SARs that document marine mammal take. The fishery should not be included in the tables due to (1) low frequency of lethal take, (2) no listed incidence of interactions with marine mammals other than killer whales, (3) the small magnitude of the fishery, (4) the declining participation and catch, and (5) the outlook for the fishery is to decrease in total catch and effort.

*Response:* One killer whale was observed to be killed incidental to the BSAI turbot longline fishery in 1999. As the SARs use the most recent 5 years of information to calculate human-related

mortality and serious injury information, it is appropriate to include this mortality in the relevant killer whale SARs for 2005. This mortality will not be included in the estimated total mortality levels calculated in the SARs for 2006, and text that describes the historical take will include relevant statements about trends in the fishery.

*Comment 21:* NMFS uses a 5-year window for looking at marine mammal interactions with a fishery. The BSAI turbot longline fishery has one take (1999) in 5 years. If there were no takes in 2004, then there are no takes in the most recent 5-year window.

*Response:* The draft SARs were prepared during the fall of 2004, when only 1999–2003 observer data were available. Thus, the one killer whale take is included in the SARs for 2005. The calculation of the total human-related mortality rate for killer whales will exclude this take in the SAR for 2006.

*Comment 22:* The number of vessels that actually participate in the fishery is small and is considerably less than the 36 vessels indicated in the LOF. In 2004, only 6 vessels had catches greater than 100mt.

*Response:* NMFS will review available information on the number of vessels in the flatfish trawl fishery, and other fisheries, and will update the information in the 2006 SARs.

*Comment 23:* The vessels that participate in the hook and line fishery are all catcher-processor vessels and are all generally observed when participating in the turbot fishery. Vessels over 125 feet (38 m) long have 100–percent observer coverage. Vessels between 60–125 feet (18–38 m) long have 30–percent observer coverage, except these vessels must have an observer onboard at all times during at least one fishing trip in that calendar quarter and at all times during at least one fishing trip in that calendar quarter for each of the groundfish categories. Thus, because most vessels make only one turbot trip, the net effect of the regulation is that every turbot trip is observed.

*Response:* Observers are placed on a vessel based on what the captain intends to catch during that trip. However, the Catch Accounting System, on which the fishery definitions in the LOF are based, does not use what the captain intends to catch as the target species for that trip. Instead, the target species for that vessel’s trip is determined based on what the vessel actually catches in its hauls. Thus, if a captain is targeting flatfish, but the catch is predominantly turbot, that vessel is assigned to the turbot fishery.

The percent of observer coverage will reflect a combination of the coverage on those vessels whose captains state that they are targeting turbot and actually catch turbot, and the coverage on vessels whose captains state that they are targeting some other species, but catch predominantly turbot.

*Comment 24:* The figure of 7 percent reproduction rate for humpback whales is inflated.

*Response:* The best available scientific information indicates the rates of increase of humpback whale populations range from 7 percent to 10 percent for the North Pacific population, and 8.8 percent to 14 percent for other populations of humpbacks. The estimate of 7 percent is based on a study on the humpback whales in the Hawaii breeding grounds (Mobley et al., 2001) and is believed to be a reasonable estimate of the current rate of increase of the population; thus, it is an appropriately conservative estimate of the maximum theoretical rate of increase for humpback whales for calculating PBR.

*Comment 25:* The SARs include figures that are 8 years old. The U.S. was a far different place 8 years ago than now, and the SARs should be updated to include more recent information.

*Response:* The information in the SARs on abundance, trends in abundance, and human-related mortality are the best information currently available for that stock. In many cases, the "best information" has been collected within the past 5 years. However, there are other situations in which the "best information" was collected 8 or more years ago. This information will be retained in the SARs until better information is collected, or until there is a strong, specific reason for discrediting the information.

*Comment 26:* For all Alaska stocks, the reports should clarify the meaning of "N/A" for observer coverage. Presumably, N/A indicates that the exact level of observer coverage is unknown and that some portion of the fishery was observed.

*Response:* The use of N/A in the tables summarizing incidental mortality and serious injury means that data are not available. Data may not be available due to one of two situations: (1) The fishery was observed, but an estimate of the level of coverage was not available when the SAR was developed or (2) the data result from logbooks, self-reports, or strandings, so listing observer coverage is not possible. NMFS will explore alternative methods of distinguishing between these situations in the 2006 SARs.

*Comment 27:* Until observer programs are instituted for Southeast Alaska fisheries, the status of many stocks of marine mammals in Southeast Alaska cannot be adequately evaluated.

*Response:* NMFS agrees. Over time, NMFS plans to implement observer programs for all fisheries in Southeast Alaska that are currently known or suspected to have a moderate level of serious injury and mortality of marine mammals as future funding levels allow.

*Comment 28:* The report for the western stock of Steller sea lions should explain why pups and non-pups were counted separately, using different methods. The report should clarify whether pups were counted at all rookeries or if, in fact, some rookeries were not counted (resulting in a minimum count).

*Response:* The SAR will be updated to reflect this request in 2006.

*Comment 29:* It is not clear how many Steller sea lions that strand have bullet wounds or whether these mortalities/serious injuries are reported under subsistence hunting (i.e. struck and lost). They are not listed under potential fishery interactions.

*Response:* Steller sea lions with bullet wound are occasionally observed and reported to NMFS. Subsistence harvest of Steller sea lions by Alaska Natives is permitted, and the numbers of animals killed or struck but lost are reported in the SARs in the "Other mortality" section. Shooting Steller sea lions, outside of a subsistence harvest, is a direct violation of the Marine Mammal Protection Act and the Endangered Species Act (ESA) and may be subject to legal action. The NOAA Office for Law Enforcement successfully prosecuted two illegal shootings of Steller sea lions in 1998. However, the agency assumes, unless proven otherwise, that Steller sea lions observed with bullet wounds are those "struck but lost" in the course of the legal, Alaska Native subsistence harvest. The Alaska SRG has recommended changing this practice, as Steller sea lion observed with bullet wounds may not have been targeted by the subsistence harvest. NMFS will consider how best to report information about Steller sea lions observed with bullet wounds in the 2006 SARs.

*Comment 30:* The minimum count for the eastern stock of Steller sea lions is only 2.5 percent lower than the population estimate based on pup counts and a correction factor. Either the minimum count includes almost every individual, which seems unlikely, or the correction factor applied to pup counts is unexpectedly low.

*Response:* An abundance estimate based on a pup count multiplied by the correction factor is likely to be an underestimate because the correction factor is known to be conservative because factor is based on a stable population (0 growth rate). The eastern Steller sea lion stock is actually growing about 3 percent per year.

*Comment 31:* The counts in Table 4 for the SAR for the eastern stock of Steller sea lions are presumably uncorrected counts, which should be indicated in the text.

*Response:* The term "counts" is used consistently to refer to raw, uncorrected counts of individuals. It is not necessary to change the text for the caption of Table 4.

*Comment 32:* The 4.5 expansion factor that has been applied to the count of northern fur seal pups in order to estimate the population size is based on a historical sex-age distribution that may no longer be valid. The factor should be validated or updated, or an alternative method for estimating population size should be used.

*Response:* The 4.5 expansion factor for northern fur seals is based on an analysis of the life history of the population many years ago; NMFS agrees that this expansion factor should be updated. In 2005, NMFS initiated an expanded study on northern fur seals in order to determine the cause of the stock's decline. The results of these studies may, within several years, allow NMFS to update the expansion factor.

*Comment 33:* Under "Fisheries Information", the SAR for northern fur seals indicates that several fisheries which are known to interact with northern fur seals have not been observed. For that reason, the resulting fishery mortality estimate should be considered an underestimate. However, the text currently states that the estimate is "conservative", which can be interpreted in different ways and may be misleading in a management context. Consider revising the text to avoid confusion.

*Response:* The text will be reviewed and revised in a future draft if appropriate.

*Comment 34:* The subsistence harvest of juvenile male northern fur seals has not been terminated, as the text of the SAR suggests.

*Response:* The commenter is correct. Juvenile male northern fur seals are taken in an Alaska Native subsistence harvest. The SAR will be reviewed and updated in 2006 to eliminate confusing language.

*Comment 35:* The SARs for harbor seals have not been updated since 1998 and should be updated to include new

information, particularly new information on stock structure. If a decision on the stock structure is still forthcoming from the comanagement committee, the SARs should be developed to show prospective stocks. Until this action is taken, it is not possible to evaluate the status of harbor seals with regard to fisheries, subsistence harvest, or other potential conservation issues.

*Response:* The SARs for Alaska harbor seals are currently based on a stock structure that is known to be incorrect. NMFS is actively working with our partners in the comanagement community to identify groups of harbor seals that can be called "stocks" under the MMPA. Significant progress towards identifying stocks has occurred, and NMFS remains hopeful that stock structure can be revised soon. In the interim, the Alaska Scientific Review Group has recommended that the SARs for Alaska harbor seals be updated with new information on abundance and human-related mortality levels using the existing stock structure. NMFS will make these updates in the 2006 SARs.

*Comment 36:* At this time, there are no current abundance estimates for spotted seals, bearded seals, ringed seals, or ribbon seals. In addition, there is a subsistence harvest of each species, and each species is very likely to be vulnerable to changes in climate. NMFS should develop and implement the research needed to provide a better, more reliable, basis for management of these 4 species of ice seals.

*Response:* NMFS agrees that research is needed to provide a better basis for management of these species. Research project were initiated in 2005 using funds appropriated under the "Alaska Seals and Steller Sea Lions" line item. These studies will be continued in FY 2006, as funding allows.

*Comment 37:* The 43–72 percent population declines described for ringed seals are substantial and are cause for concern. Although these may reflect changes in survey timing, they may also be a result of a real decline in the population. There is a longstanding concern about the lack of research on ringed seals.

*Response:* NMFS agrees. At this time, it is not possible to distinguish between the possibility that the differences in counts are due to changes in abundance or changes in methods.

*Comment 38:* The Moulton *et al.* (2002) study that documents lack of impact of industrial activity on ringed seal distribution in the Beaufort Sea may be relevant only in areas of low ringed seal density. The SAR should be amended to state that the results may

not apply throughout the range of ringed seals.

*Response:* NMFS updated the text to acknowledge that the study may not be applicable throughout the range of the species.

*Comment 39:* The correction factor used for estimating abundance of the Beaufort Sea stock of beluga whales appears to be arbitrary in spite of the existence of empirically derived correction factors. The basis for rejecting the empirically derived factors was not explained. The use of an arbitrary correction factor results in an underestimate of the variance of the population estimate because the uncertainty about the correction factor is not incorporated into the variance of the abundance estimate. As a result, the minimum population estimate of the stock (Nmin) may be overestimated.

*Response:* The correction factor (CF) used for estimating abundance of the Beaufort Sea stock of beluga whales was a consensus opinion from a workshop on the Beaufort Sea beluga (see Duvall, 1993), which reviewed data from tagging experiments done in Bristol Bay and a paired observer study conducted on the population in 1985. This CF has been used with subsequent survey data to maintain consistency. Although the CF of 2 appears to be arbitrary, it was intended to be conservative and, in fact, low compared to empirically derived CFs for similar surveys ranging from 2.75 to 3.5. Although variance in the abundance estimate may be underestimated, the low CF reduces the likelihood that Nmin is an overestimate.

*Comment 40:* The use of a 1.0–recovery factor for the eastern Chukchi Sea and Bering Sea stocks seems unwarranted because population estimates are poor and it is difficult to conclude that the population is stable. A more precautionary approach would be to classify the status of the stock as "unknown" and use the default recovery factor of 0.5.

*Response:* NMFS will consider this comment when the SAR for this stock is next reviewed and will discuss it with the SRG.

*Comment 41:* As stated in previous years, NMFS should use a recovery factor of 0.1 in the calculation of the PBR level for the Cook Inlet beluga whale stock. Use of a recovery factor of 0.3 is more inappropriate now than it was in 2001 because the population has shown no signs of recovery despite only a few known subsistence takes during the past seven years.

*Response:* NMFS acknowledges that the available data indicate that no recovery of this population is evident, despite careful regulation of the

subsistence harvest. NMFS has initiated a status review of this stock to evaluate whether the stock should be listed as "endangered" or "threatened" under the ESA and will consider changing the recovery factor once the status review is completed.

*Comment 42:* The SAR for the eastern North Pacific Alaska resident stock should indicate whether shooting of killer whales is still a problem in Alaska.

*Response:* NMFS will review the report and may (as appropriate) update the text in a future revision to reflect the current state of knowledge on this issue.

*Comment 43:* Mortality estimates for the eastern North Pacific, Gulf of Alaska, Aleutian Islands, and Bering Sea transient stock of killer whales approach the PBR level for this stock and would exceed the PBR level if the estimate from the line-transect surveys was used for Nmin in lieu of the Nmin from photo-identification. The potential for unsustainable mortality suggests a high priority for further research on this stock of transient killer whales.

*Response:* NMFS has implemented a large killer whale research program for the past three years and believes that this program will provide the information needed to determine whether the level of serious injury and mortality incidental to commercial fishing is sufficiently high to be a conservation concern.

*Comment 44:* The table of strandings and entanglements provided for the gray whale SAR is useful, and similar tables should be considered for other stocks.

*Response:* NMFS agrees, and will continue to provide this detail on strandings and entanglements for those stocks, such as gray whales, central North Pacific humpback whales, and bowhead whales, where the majority of information on human-related serious injury and mortality is gleaned through stranding reports.

*Comment 45:* Noise pollution and low-frequency sonar are listed as concerns for humpback and beaked whale stocks, but should also be listed as concerns for other species that are likely to be affected by anthropogenic noise.

*Response:* The intent of the habitat sections for SARs is to provide information on issues that are, or highly likely to be, habitat concerns. Potential impacts of anthropogenic noise are appropriately identified for beaked whales, as beaked whales are known to have died after coming in contact with certain types of sound. Similarly, humpback whales in Hawaii were documented to exhibit subtle changes in behavior in response to low frequency



sound, and this is documented in the SARs for this species. Extrapolation of this information to other species for which little information exists on the impacts of sound, or any other anthropogenic impact, is not appropriate.

*Comment 46:* The western North Pacific humpback SAR should include text describing the SPLASH humpback whale research program.

*Response:* NMFS agrees and will update the text in the next revision of this SAR.

*Comment 47:* In the analysis of marine mammal bycatch data, mortalities that occurred in non-observed fishery sets should not be combined with mortalities that were observed because this will exaggerate the number of takes with a procedure that is biased and scientifically unsound.

*Response:* See response to Comment 19 in the final List of Fisheries (71 FR 247; 4 January 2006) for a very detailed response to the same comment. The analysis of bycatch is stratified into many different strata, including fishery, statistical fishing area, etc. Estimates of bycatch are calculated for each individual stratum using data from monitored hauls. However, if the observer reported a serious injury or mortality incidental to a non-monitored haul, and there were no serious injuries or mortalities from monitored hauls in that strata, the report in a non-monitored haul is used as the estimate of serious injury and mortality for that stratum. Data from non-monitored hauls are not extrapolated using the ratio estimation approach but are simply added to an extrapolation using observer data from monitored hauls.

*Comment 48:* NMFS calculates the confidence limits for the estimate of marine mammal bycatch using a formula that results in negative numbers. This is not a reasonable result, as there cannot be a negative bycatch of marine mammals.

*Response:* See response to Comment 16 in the final List of Fisheries (71 FR 247; January 4, 2006). NMFS has revised the formula used for calculating confidence limits. The recent change from the use of the normal distribution to the use of a natural-log transformation to eliminate the occasional problem of having a negative lower confidence limit around an estimated bycatch rate.

*Comment 49:* In the draft 2005 SARs, NMFS asserts there are new, discrete populations of resident killer whales in Alaska. NMFS fails to provide the appropriate and necessary analyses to support this determination.

*Response:* It is standard procedure for SARs to summarize and provide conclusions from primary analyses that are reported elsewhere. It would not be appropriate to bring all the details of primary analyses into the SARs. NMFS, therefore, has provided the appropriate and necessary analyses through reference to scientific papers that confirm these are discrete populations. The draft SAR addresses these details by reference to the relevant published literature on this topic.

*Comment 50:* NMFS' calculation of Nmin for the Alaska resident stock of killer whales is questionable. NMFS has excluded 600 photographs because the photographs have not been matched for population grouping. NMFS has excluded an additional 68 animals because the data are 10 years old. These decisions are arbitrary.

*Response:* The SAR refers to approximately 600 individuals photographed in studies by the North Gulf Oceanic Society. Analyses of those photographs were not finalized and have not been reconciled with the NMFS collection. It is likely there will be a large number of duplicates between these independent datasets. Therefore, it would not be correct to simply add the 600 to the total number of whales. Once the two datasets are matched and reconciled, it will be possible to add these data to the abundance estimate. The 10-year old data were excluded because there is no way of discerning whether any of those 68 whales are still alive; thus, NMFS has determined not to include them in the current estimate of Nmin.

*Comment 51:* The SAR for the Alaska resident stock of killer whales states that the population has been increasing at 3.3 percent annually for 18 years. It also states that NMFS lacks the data to determine if the population is increasing or decreasing and classifies the stock status as uncertain, assigning it a recovery factor of 0.5. Eighteen years of annual population increases is sufficient evidence of a population trend. This species should be assigned a recovery factor of 1.0.

*Response:* The draft 2005 SARs define the Alaska resident stock as resident killer whales occurring between central Southeast Alaska and the Bering Sea. The draft 2005 SARs cite an observed increase of 3.3 percent for the very small portion of the Alaska resident stock that is consistently seen in Prince William Sound in the summer. An observed rate of increase in a very small portion of the stock's range cannot be interpreted to apply to the entire stock and cannot be used to justify a higher recovery factor. When the entire

range of the stock is considered, both the overall rate of increase and the status is considered "unknown". The guidelines for preparing SARs state that a 0.5 recovery factor is appropriate for stocks of unknown status. The Alaska SRG has recently reviewed the SARs for killer whale stocks and has not recommended an alternative recovery factor for any killer whale stock.

*Comment 52:* Table 30 in the Alaska resident SAR asserts that the BSAI Pollock trawl fishery had four estimated mortalities over 5 years, which translates to a mean annual mortality level of 0.61 animals. The same table indicates that the BSAI Greenland turbot fishery had three mortalities over 5 years, which translates to a mean annual mortality level of 0.6 animals. It is statistically not possible for fewer total mortalities to translate into the same mean annual mortality rate. NMFS' calculations of fishery related mortality levels are clearly erroneous.

*Response:* There is an error in Table 30 of the draft SARs, but no error in the underlying analysis. The estimated mortality for the BSAI pollock trawl fishery in 1999 was 1 (not 2) which translates to a 5-year average of 0.61. Data for the turbot longline fishery and the cod longline fishery (5-year average of 0.84 based on four mortalities) were correctly used; however, there was a typographical error in one table.

*Comment 53:* In the draft 2005 SARs, NMFS asserts there are new, discrete populations of transient killer whales in Alaska. NMFS fails to provide the appropriate and necessary analyses to support this determination. Serious questions exist regarding the extent of genetic variability and space time separation.

*Response:* The three transient killer whale populations have fixed mtDNA differences (which is a very strong difference) and also have significant differences in microsatellite nuclear DNA. These are conclusive results. As with the resident killer whales, NMFS has provided the appropriate and necessary analyses through reference to the scientific papers that confirm these are discrete populations.

*Comment 54:* The SAR admits that the stock has been increasing at 7–10 percent annually for many years. Given this increase, the abundance is 1.4–1.6 times the size of the early 1990s population. Thus, the Nmin value for this stock is greatly underestimated.

*Response:* Although this comment was in a section of a public comment letter entitled "Eastern North Pacific transient stock of killer whales", NMFS suspects that the comment refers to the central North Pacific stock of humpback



whales and responds accordingly. The *Nmin* for the central North Pacific stock of humpback whales is based on data from the early 1990s because that was the last time that photographs were taken of humpback whales throughout the range of humpback whales in the North Pacific Ocean. It is true that the abundance estimate is likely conservative, as the stock is known to have increased 7 percent annually from 1993–2000. A major research effort on North Pacific humpback whales was initiated in 2004 and will conclude in 2006. This research effort will likely result in important information on abundance and stock structure of humpback whales in the North Pacific, both of which will have implications to the *Nmin* value. NMFS will update the *Nmin* for this stock when the new information from the recent efforts is published.

*Comment 55:* The draft stock assessment for the central North Pacific stock of humpback whales notes that there may be as many as six subpopulations of humpback whales on the wintering grounds. The draft SAR for the western North Pacific stock of humpback whales admits there is considerable overlap between the ranges of the central North Pacific and western North Pacific stocks. Further, NMFS admits the agency is unable to determine to which stock a sighted whale should be assigned. If NMFS is unable to determine to which stock a whale should be assigned, how will NMFS arrive at a defensible population estimate of the individual stocks?

*Response:* Although there is considerable overlap of the western and central stocks of North Pacific humpback whales on their feeding grounds in Alaska, there is essentially no overlap on their winter/breeding grounds in Japan and Hawaii, respectively. Thus, the abundance estimates for these stocks will likely come from data collected on their winter grounds. Because the stocks are currently identified on the basis of their winter grounds, these abundance estimates are appropriate. It is difficult to assign some individual whales, sighted in some areas of Alaska, to their correct winter/breeding area stock. The basin-wide humpback whale research project mentioned in the response to Comment 54 is an on-going research program designed to help answer these types of questions. Results from this research will be incorporated into the SARs as soon as practicable.

*Comment 56:* The BSAI pollock trawl fishery and the Bering Sea sablefish pot fishery each have one estimated mortality over the past 5 years, but the

mean annual mortality rates are different. Such a result shows the flaws in the NMFS methodology and conclusions.

*Response:* There is a difference in the analytical approach for these two fisheries that explains why a single mortality in 5 years results in a different estimated annual mortality level for the two fisheries. The single mortality/serious injury in the Bering Sea sablefish pot fishery was not seen during a monitored haul; therefore, it is a minimum count of the mortality/serious injury that occurred incidental to this fishery and is simply divided by five to obtain an average annual mortality rate over 5 years. Because the mortality in the pollock trawl fishery was observed in a monitored haul, the mean annual mortality level is calculated by a more complicated formula that takes into consideration the observer effort in each year, 1999–2003. Thus, the analysis appropriately accounts for differences in the types of data available and adjusts the formulae accordingly.

*Comment 57:* Tables 42, 43, and 44 in the report that describe the level of mortality and serious injury of central North Pacific humpback whales do not provide any way to arrive at the estimated minimum fishery induced mortality level of 2.6 for the northern portion of the stock, and 2.7 for the southeast portion of the stock. Further, Table 42 claims that the whales involved in a commercial fishery interaction were from the central stock, while Table 44 admits that the stock identification is unknown. Moreover, the SAR attributes the same mortality to both the northern portion of the stock and to the southeast Alaska portion.

*Response:* NMFS agrees that it can be challenging to follow the compilation of information on serious injuries and mortalities of humpback whales in the central North Pacific stock. Table 42 includes the information obtained for observer programs. Table 43 includes the raw data on individual strandings and entanglements of humpback whales. Table 44 summarizes the stranding and entanglement data. Table 45 adds the values in Table 42 and the values in Table 44 to provide an estimate of the total serious injury and mortality of central North Pacific humpback whales. The heading “Hawaii summer feeding area unknown” in Table 43 is misleading and has been updated. It is not known whether the summer feeding area for these individuals is the northern portion or the southeast portion of Alaska, but it is quite certain that humpback whales in Hawaii are part of the central North

Pacific stock. Because it is not known whether these animals summer regularly in the northern portion or the southeast portion of Alaska, the mortalities are assessed as if they came from either portion. Also, see response to Comment 14.

*Comment 58:* The discussion of *Nmin* for the western North Pacific stock of humpback whales states that *Nmin* is conservative because the *Nmin* is 367 animals, yet the results of summer surveys in the Bering Sea indicate the presence of over 1000 animals.

*Response:* The abundance estimate on which the *Nmin* was based is from the waters off Japan, where the western stock does not mix with other stocks. The estimate of 1000 humpback whales in the Bering Sea reflects a count of animals from both the western and central stocks. The *Nmin* value of 367 is the most appropriate *Nmin* at this time and will be updated when the results of recent humpback whale research are available. Comparisons to the estimate of 1,000 humpback whales in the Bering Sea have been struck from the SAR as this refers to a mixed-stock abundance estimate.

*Comment 59:* The western humpback whale stock has increased 7 percent annually, providing evidence that the NMFS estimates are low and should be increased.

*Response:* The reported 7-percent increase was estimated for the Central North Pacific rather than the Western North Pacific stock of humpback whales. There is insufficient information available to estimate the trend of the Western North Pacific stock of humpback whales. Accordingly, there is no basis to increase the abundance estimate for the Western North Pacific stock.

*Comment 60:* The SAR for the western stock of Steller sea lions includes the same types of inaccuracies identified in other SARs. For example, the estimated mortality for 5 years for the BSAI flatfish trawl fishery is 14 animals over the 5 year period. The average is 2.8 yet the NMFS chart asserts the mean annual mortality is 3.35. There are similar mathematical discrepancies in virtually every computation.

*Response:* The mean annual mortality rates based on observer data presented in the SARs are calculated using a stratified model and pooled effort. Thus, the estimated annual mortality rates for a specific 5-year period cannot be calculated simply by adding the estimated mortality levels for each year and dividing by five.

*Comment 61:* The SAR for the western U.S. stock of Steller sea lions asserts that *Nmin* is 38,513. The SAR also states

that this estimate excludes the number of Steller sea lions in Russia, which are technically part of this stock. Until these are designated officially as a separate stock, NMFS cannot exclude these from the PBR level.

*Response:* The commenter is correct that the western stock of Steller sea lions, as currently described, does include Steller sea lions in Russia and does not include counts from Russia. Counts at Russian sites have not been included in the SAR for three reasons: (1) It is consistent with the guidelines for developing the SARs, which state that, for a non-migratory situation, the PBR level should be calculated based on the abundance of the stock residing in U.S. waters, (2) the methods for counting Steller sea lions are not consistent between countries, and (3) available information, which will soon be published in peer reviewed literature, indicates that there is a decisive stock boundary just west of the Commander Islands, such that the animals found on the Commander Islands would belong to the same stock as the animals on the Aleutian Islands. Accordingly, NMFS has been basing management decisions to conserve Steller sea lions by focusing on the dynamics of Steller sea lions occurring in U.S. waters. NMFS will consider formal separation of the western stock of Steller sea lions in the 2006 SARs.

*Comment 62:* The SAR for the western stock of Steller sea lions states that 2.2 percent of all interactions between fisheries in the Gulf of Alaska and sea lions are with California sea lions. Despite this, NMFS counted every interaction with a sea lion as a Steller sea lion interaction. The overall serious injury/mortality rate should be reduced by 2.2 percent to account for the proportion that involves California sea lions.

*Response:* The statement in the SAR refers to the frequency of logbook reports of California sea lions. Because California sea lions can be confused with Steller sea lions and because California sea lions are extremely rare in Alaska, logbook reports of California sea lions in Alaska are assumed to be erroneous, and all "sea lions" are counted as Steller sea lions. Fishery observers are trained to differentiate between California sea lions and Steller sea lions. Modifications to observer data to account for possible confusion by untrained personnel submitting logbook reports could underestimate mortality and serious injury of Steller sea lions.

*Comment 63:* The SAR for western Steller sea lions uses information from an observer program in 1990–91 to provide an estimate of mortality in the

Prince William Sound salmon drift gillnet fishery. NMFS should place observers to monitor this fishery to provide more up-to-date information on take levels.

*Response:* NMFS has a plan to rotate an observer program among different Alaska state fisheries with known, moderate levels of marine mammal bycatch. Current resources limit observer effort to a single fishery each year. At this rate, it will take over 20 years to observe all state fisheries in Alaska with a documented level of take. In 2006 and 2007, the Yakutat set and drift gillnet fisheries will be observed. It is not yet known what the observer program priorities will be for 2008. NMFS will consider this recommendation, along with others, in setting priorities for future observer programs.

#### *Comments on Atlantic Regional Reports*

*Comment 64:* For gray seal, Western North Atlantic stock, the report indicates the recovery factor for this stock is 1.0 although the status of the population is unknown. A recovery factor of 1.0 may be appropriate, given that the stock seems to be increasing in U.S. waters; however, if NMFS is not confident that the stock is increasing, then the recovery factor should be 0.5, the default value for stocks of unknown status.

*Response:* The gray seal population is increasing in U.S. waters. This conclusion is based on aerial survey counts of pupping colonies off the coasts of Maine and Massachusetts and increases in the "summer" population located in eastern Nantucket Sound.

*Comment 65:* For harbor seal, Western North Atlantic stock, the 1997 abundance estimate provided in the text (30,617) does not match the estimate provide in Table 1 (30,990). The report also mentions recent tagging efforts but provides no findings.

*Response:* Typographical errors have been corrected. The 1997 abundance estimate (31,078) from the Gilbert et al., 2005 publication in Marine Mammal Science has been inserted into the report. A brief summary of 2001 radio tagging, which was used to obtain the 2001 survey correction factor, has been included into the report. Detailed tagging information is contained in another manuscript (Waring et al., Northeastern Naturalist, in press) cited in the 2005 SAR.

*Comment 66:* For fin whales, Western North Atlantic stock, the estimated mortality of 1.4 is not less than 10 percent of PBR (4.7); therefore, the level of mortality and serious injury is not

approaching the Zero Mortality Rate Goal (ZMRG).

*Response:* The report has been revised to note that mortality and serious injury is not considered insignificant and approaching a zero mortality and serious injury rate.

*Comment 67:* For minke whale, Canadian east coast stock, it is not clear how the 1995 takes incidental to the pelagic gillnet fishery were estimated with a Coefficient of Variation (CV) of 0; this would seem possible only if NMFS had 100 percent observer coverage for that fishery in 1995.

*Response:* Observer coverage on the pelagic gillnet fishery in 1995 was 99 percent. NMFS, therefore, considers the observed mortalities and serious injuries to be an enumeration rather than a sample.

*Comment 68:* For long-finned pilot whale, Western North Atlantic stock, the data from the Kingsley and Reeves (1998) survey are not shown in Table 1 although the text suggests otherwise. As mentioned above for short-finned pilot whales, NMFS should consider increasing the observer coverage within the mid-Atlantic groundfish trawl fishery to reduce the variability in take estimates and clarify the potential impact of this fishery on pilot whales.

*Response:* The 1995 data are not presented in Table 1 because they are older than 8 years. The observer coverage Mid-Atlantic trawl fisheries has increased over the last few years, although the coverage is higher in the NE than in the Mid-Atlantic for some trawl fisheries. The higher coverage levels will be reported in the 2006 SAR.

*Comment 69:* For white-sided dolphin, Western North Atlantic stock, the observed mortality in the bottom trawl fishery in 2003 was approximately 10 times higher than in other recent years, suggesting a potential problem for white-sided dolphins. Once the total mortality is estimated for 2003, it is very likely that the estimate will exceed the PBR for this stock. To address this concern, the mortality estimates for 2002, 2003, and the annual average mortality from 1999–2003 should be calculated. NMFS also should consider increasing the observer coverage within the mid-Atlantic groundfish trawl fishery, which would help clarify the impact of this fishery on pilot whales.

*Response:* Updated mortality estimates for white-sided dolphins in the mid-water and bottom trawl fisheries will be included in the 2006 draft SAR. The observer coverage in the NE and Mid-Atlantic trawl fisheries has increased over the last few years, although the coverage is higher in the NE than in the Mid-Atlantic for some

trawl fisheries. The higher coverage levels will also be reported in the 2006 SAR.

*Comment 70:* For common dolphin, Western North Atlantic stock, the text indicates that the joint surveys overlapped spatially (from North Carolina to Maryland). The text should describe how the surveys were designed to avoid double-counting animals.

*Response:* The text has been revised to clarify that there was no spatial overlap in the surveys. The shipboard surveys covered separate geographic blocks in shelf break and slope waters. The aerial component of the northern survey extended to North Carolina, but the aircraft covered continental shelf habitat rather than shelf edge and deeper waters, which were surveyed by vessel in the southern effort.

*Comment 71:* For harbor porpoise, Gulf of Maine/Bay of Fundy stock, the estimated takes of 2,100–2,500 harbor porpoises in the Gulf of St. Lawrence gillnet fishery are worrisome, even if the estimates are unreliable. If the estimates are even close to accurate, they indicate a serious problem for harbor porpoise. It is not clear whether these estimates or any information from this fishery are included in the mortality estimate for the stock.

*Response:* The harbor porpoises in the Gulf of St. Lawrence are considered to be a different stock from the Gulf of Maine/Bay of Fundy stock, as is documented from genetic studies. Therefore, the Gulf of St. Lawrence takes are not included in the mortality estimate for the Gulf of Maine/Bay of Fundy stock.

*Comment 72:* For all Southeast Atlantic stocks, the reports should provide context for evidence of human interactions, particularly in cases with no indication of human interactions for stranded animals. For example, the reports should indicate how many stranded animals were too decomposed to make an assessment. The report on the western North Atlantic coastal morphotype stocks of bottlenose dolphins provides details of this sort.

*Response:* These details will be included in affected SARs beginning with the 2006 SAR.

*Comment 73:* The reports should indicate how many, if any, stranded bottlenose dolphins were coastal or offshore morphotypes and how many could not be identified as to morphotype.

*Response:* Determination of morphotype (based upon genetic analysis of tissue samples) is not routinely done throughout the range of this stock (i.e. the Atlantic coast) nor consistently through time. This

constraint is noted in the text preceeding Table 4. NMFS is working with our partners in the stranding network to improve collection of tissue samples from all stranded bottlenose dolphin carcasses; however, analyses of the samples (several hundred per year), is limited by available resources.

*Comment 74:* For bottlenose dolphin, Western North Atlantic coastal morphotype stocks, the CVs for population estimates are substantially greater than one, ranging from 15 to 111. If the estimates are truly that imprecise, then they are virtually meaningless and should not be reported. The reports should provide the total estimated mortality for each fishery, for all fisheries combined, and for each management unit. That information is necessary to assess the mortality with respect to PBR for each management unit.

*Response:* In the draft SAR, the CVs were reported as a percentage (that is,  $CV * 100$ ). For example, a value of 15 (percent) reported in the draft is actually a CV of 0.15 when written as a proportion. The CVs reported in Table 1 are now reported as proportions to be consistent with other SARs. Tables 2 and 3, in combination, accomplish the goal of providing estimated mortality for each fishery, all fisheries combined, and for each management unit, due to the spatial segregation of the fisheries for which there are available bycatch estimates. The mid-Atlantic coastal gillnet fishery affects only the Northern Migratory stock, the Southern North Carolina stock, and the Winter Mixed stocks. The shark drift gillnet fishery affects only the Northern Florida and Central Florida stocks. Therefore the tables, as presented, document total estimated serious injury and mortality for each stock.

*Comment 75:* In the pygmy sperm whale (*Kogia sima*), Western North Atlantic, report, NMFS estimates that six *Kogia* sp. were taken in the pelagic longline fishery, which is twice the PBR (3) for the two species combined, suggesting that both species should be strategic. Currently, dwarf sperm whales are not considered strategic, and no takes of any *Kogia* sp. are listed in the dwarf sperm whale report.

*Response:* Pygmy sperm whales, identified to species, were caught by the pelagic long-line fleet in 1999–2000, as reported. It is appropriate to assign all these takes to this species, as opposed to splitting it among the two species, dwarf- and pygmy sperm whales because none of the latter were reported in the bycatch. This will be clarified in future reports.

*Comment 76:* NMFS estimates that 228 pilot whales were taken in 1999 incidental to the mid-Atlantic groundfish trawl fishery and zero whales were taken in other years. Low observer coverage in this fishery likely contributed to the large variability in annual estimates, but the possibility that the true annual take may be closer to 228 than to 0 merits serious concern. The Service should consider increasing the observer coverage within the mid-Atlantic groundfish trawl fishery.

*Response:* The observer coverage in the NE and Mid-Atlantic trawl fisheries has increased over the last few years although the coverage is higher in the NE than in the Mid-Atlantic for some trawl fisheries. Those coverage levels and the information obtained will be reported in the 2006 SAR.

*Comment 77:* NMFS should provide information regarding which fisheries are monitored in the Gulf of Mexico, similar to the summaries provided for other regions. Based on interactions described in the Gulf of Mexico SARs, menhaden, gillnet and longline fisheries should be monitored closely.

*Response:* Appendix III, Part B includes information on fisheries operating in the Gulf of Mexico and the associated observer programs. NMFS administers a mandatory observer program for the U.S. Atlantic Large Pelagic Longline Fishery. The program has been in place since 1992 and randomly allocates observer effort over eleven geographic fishing areas proportional to total reported effort in each area and quarter. Observer coverage levels are mandated under the Highly Migratory Species Fishery Management Plan. The Southeastern Shrimp Otter Trawl Fishery Observer Program is a voluntary program administered by NMFS in cooperation with the Gulf and South Atlantic Fisheries Foundation. The program is funding and project dependent; therefore, observer coverage may not be randomly allocated across the fishery. Fisheries interactions are reported in Table 2 of each SAR.

*Comment 78:* For bottlenose dolphin, Northern Gulf of Mexico continental shelf stock, the scientific support for defining this management unit is not clear from the report, which suggests that dolphins on the continental shelf may include a mix of coastal and offshore stocks of dolphins.

*Response:* The stock structure for the northern Gulf of Mexico bottlenose dolphins has not been revised since its inception in 1995. This stock structure was based on assumptions concerning oceanography or habitat and on analogy with biological studies in and near

Sarasota, FL. An expert panel reviewed this stock structure in 2000 and recommended retaining the current stock structure until there is scientific support for changing it.

*Comment 79:* At least one false killer whale, Gulf of Mexico stock, was killed as a result of human interactions (the 1999 stranding) within the 1999–2003 period evaluated in the report, resulting in at least 0.2 takes/year. If that observed rate is adjusted to account for the likelihood that stranding records underestimate actual takes, the rate could exceed 10 percent of PBR (0.61). Therefore, it seems inappropriate to conclude that false killer whale takes are approaching the ZMRG.

*Response:* NMFS agrees that incidental mortality of this stock may be underestimated and that the conclusion may be incorrect. NMFS and the appropriate SRG jointly evaluate SARs prior to release for public review and comment and did so in this case. NMFS and the SRG will evaluate the appropriateness of the conclusion at the next meeting (currently scheduled in January 2007), and, if necessary, NMFS would alter the conclusion in the next revision of the affected SAR.

*Comment 80:* The reports for beaked whale stocks in the Gulf of Mexico should be revised to clarify the relationship of the various population estimates, particularly the estimate for unidentified Ziphiids. For example, it seems that the total abundance of all beaked whales would be the sum of the estimates for Cuvier's beaked whales (95), *Mesoplodon* sp. (106), and unidentified Ziphiids (146), or 347 total beaked whales. Similarly, the total abundance of Cuvier's beaked whales could be as large as the sum of the estimates for Cuvier's beaked whales. The reader can infer the relationships, but minor text edits would provide clarity.

*Response:* The Gulf of Mexico SARs will be modified in the 2006 SAR for consistency with the Atlantic U.S. coast SARs, to include combined estimates of undifferentiated beaked whales.

*Comment 81:* For pygmy Sperm whale, Northern Gulf of Mexico stock, the report should indicate whether any stranding showed evidence of human interactions.

*Response:* The report has been revised to include the number of strandings with evidence of human interaction.

#### *Comments on Pacific Regional Reports California Harbor Seal*

*Comment 82:* Correction factors for harbor seal haulout behavior should be standardized throughout NMFS. The

Commission also mentioned the desirability of having satellite or VHF radio tagged seal studies used to determine haulout correction factors for aerial surveys.

*Response:* Correction factors for California harbor seal counts were specifically developed for surveys where counts are made during the peak molt season. In other regions, harbor seal counts are made during peak pupping season, and the correction factors used for those counts reflect the specific count methodology used. The time series of California harbor seal counts reflects counts during peak molt and remain consistent with past years for the purpose of not introducing bias into the trend data. Correction factors based on VHF radio tagging are being developed by Dr. Jim Harvey at Moss Landing Marine Laboratories in California. Some of the data used in these correction factors were collected in tandem with harbor seal aerial surveys conducted by NMFS in 2004.

*Comment 83:* Figure 3, which shows annual net productivity and a non-significant regression on these data since 1982, should be removed.

*Response:* NMFS will keep the figure in the current SAR for this stock, as the data, though not significant, are still important in demonstrating how annual variability in net production can vary widely even for a well-studied stock.

*Comment 84:* It was not clear if the seal shootings mentioned in the draft SAR were seals that were shot at sea and drifted to shore or whether they were shot while ashore. Such shooting is evidence for the need of increased enforcement.

*Response:* It is difficult to determine the geographic origin of shootings in harbor seals (or other marine mammals), as carcasses are often decomposed, and it is unclear how long a carcass may have been on the beach. NMFS agrees that increased enforcement would benefit the conservation of marine mammals and other living marine resources. When additional resources are available, NMFS will expand enforcement efforts along with other aspects of marine mammal conservation.

*Comment 85:* Observers should be placed in the "large mesh drift gillnet fishery" that takes harbor seals.

*Response:* The comment actually refers to the small mesh set gillnet fishery for halibut and angel shark. NMFS agrees that having regular observer coverage in many fisheries would enhance the ability to assess the status of marine mammals (see response to Comment 9 regarding a requirements plan for protected species stock

assessment); when resources are available to support such observers, NMFS will place them in the fishery.

*Comment 86:* The report for Southern Resident Killer Whales should include information about the population viability analyses that were conducted to support the proposal to list the stock as threatened.

*Response:* The analyses are described in full in the reports of the status reviews for this stock of killer whales (one in 2002 and a second in 2004); these reports are cited in the SAR. The purpose of the SAR is to present a brief summary of the status of the stock with emphasis on abundance, trend, human-caused mortality and serious injury, and status. Each report contains an extensive list of literature cited to guide interested readers to the details supporting the text in the SAR. In this case, interested readers may read the status review for a discussion of the analyses used in assessing the "species" status under the ESA. The reports of the status reviews are available on the Internet at the following address: <http://www.nwr.noaa.gov>, under the tabs, "Marine Mammals" and "Killer Whales".

Dated: April 28, 2006.

**Donna Wieting,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 033006B]

#### Atlantic Highly Migratory Species; Scientific Research Permit

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

**ACTION:** Notice; request for a scientific research permit; request for comments.

**SUMMARY:** NMFS announces the receipt of a request for a scientific research permit (SRP) to survey and determine abundance and distribution of pelagic sharks, inject pelagic sharks with tetracycline for age validation studies, track the survival and movement of Highly Migratory Species (HMS) with conventional and satellite pop-up tags in the Atlantic Ocean, and collect biological samples. While this research will occur in waters from the Gulf of Maine to Delaware, NMFS invites comments from interested parties on