

However, because the potential exists that the survey schedule could be delayed and overlap with the southbound gray whale migration, some or all of the survey could also potentially result in harassing gray whales. To cover that possibility, a proposed authorization for harassment takes of gray whales has been included. Applying Forney et al.'s (1995) gray whale density from the winter/spring surveys (0.014) to the ZPD (773 km<sup>2</sup>) indicates that 11 gray whales could

potentially be subject to acoustic harassment.

Also, while the assumption can be made that a population of 70–81 cetaceans may be harassed during the SYU survey, because the 160 dB ZPH at any one instant of time is only a portion of the entire 773 km<sup>2</sup> ZPD, and because the seismic array is turned off while repositioning on the succeeding transect, these cetaceans, at least theoretically, may be harassed more than once during the course of the survey, unless they leave the area as a

result of either normal transiting (migration) or seismic noise.

NMFS estimates that each east-west and south-north transect would have a ZPH approximately 344 km<sup>2</sup> and 147.3 km<sup>2</sup>, respectively and each of the 64 east-west or 6 south-north transects comprise approximately 45 percent or 19 percent respectively, of the total ZPD. As a result, theoretically there is the potential for the SYU seismic survey to result in 2,360 harassment takings proportionally divided as follows:

Whale species	Density (No./km <sup>2</sup> )	Total ZPD (km <sup>2</sup> )	Total number of harassment takings
Blue whale .....	0.033	22,900	756
Fin whale .....	0.013	22,900	298
Humpback whale .....	0.009	22,900	206
Minke whale .....	0.008	22,900	183
Sperm whale .....	0.011	22,900	252
Pygmy sperm whale .....	0.013	22,900	298
Sei whale .....	0.001	22,900	23
Bryde's whale .....	0.001	22,900	23
Gray whale .....	0.014	22,900	<sup>5</sup> 321

<sup>5</sup> As gray whales generally migrate from feeding grounds to breeding lagoons offshore Baja California from November–December, if the seismic survey is delayed from its anticipated commencement date, some harassment of this species may occur.

### Mitigation

To avoid potential injury to marine mammals, NMFS proposes to: (1) Require airguns to be ramped-up to operating levels over a 5-minute period at the commencement of operations, when beginning a new trackline or anytime that the array is powered down; (2) recommend not turning the array off at times when restarting the array would occur during nighttime hours; and (3) if marine mammals are observed within the 195 dB isopleth (91.5 m (300 ft) of the source), starting operations must be delayed until all marine mammals are outside the 195 dB zone. It is proposed that NMFS-approved observers be required to make these observations.

### Monitoring

NMFS proposes that the holder of the Incidental Harassment Authorization will monitor the impact of seismic activities on the marine mammal populations within the SYU. Monitoring will be conducted during daylight hours by NMFS-approved observers. In addition, monitoring will begin 30 minutes prior to any time the seismic array is turned on and will continue until turned off. Monitoring will consist of noting the numbers and species of all marine mammals seen within the ZPH, and any behavioral responses or modifications due either to the seismic array or by the vessel. A report on this monitoring program will be required to be submitted to NMFS within 90 days

of completion of the survey. Specific monitoring and reporting requirements will be specified in the Incidental Harassment Authorization, if issued.

### Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of this authorization. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

### Conclusions

NMFS has determined preliminarily that the short-term impact from conducting a 3-D seismic survey within the SYU may result in a temporary modification in behavior by certain species of cetaceans. While behavioral modifications may be made by these species of cetaceans to avoid seismic noise, this behavioral change is expected to have only a negligible impact on the animals.

There is no known recent subsistence use of marine mammals in southern California.

### Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for a 3-D seismic survey within the SYU provided the above mentioned monitoring and reporting requirements

are incorporated. NMFS has preliminarily determined that the proposed seismic activity would result in the harassment of only small numbers of mysticete cetaceans, sperm whales, and possibly pygmy sperm whales; will have a negligible impact on these cetacean stocks; and will not have an unmitigable adverse impact on the availability of this stock for subsistence uses.

### Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see ADDRESSES).

Dated: June 2, 1995.

**William W. Fox, Jr.,**

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

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[I.D. 060195A]

### Shark Operations Team; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Shark Operations Team (OT) will hold a meeting on June 8, 1995, at NMFS in Silver Spring, MD.

**DATES:** The meeting will be held on June 8, 1995 from 9 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at NMFS, 1315 East-West Highway, Room 12836, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** C. Michael Bailey, telephone: (301) 713-2347, Fax (301-713-0596).

**SUPPLEMENTARY INFORMATION:** The following topics will be discussed:

- (1) 1995 Shark Evaluation Annual Report;
- (2) First semi-annual fishing season for sharks;
- (3) Results of recent management measures;
- (4) Possible permit moratorium;
- (5) Possible fishing season modifications;
- (6) Data collections issues; and
- (7) Possible changes in management measures of whale shark, *Rhincodon typus*, basking shark, *Cetorhinus maximus* and white shark, *Carcharodon carcharias*.

The meeting may be lengthened or shortened based on the progress of the meeting. The meeting is open for the public to attend. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to C. Michael Bailey at least 5 days prior to the meeting date.

Dated: June 1, 1995.

**Richard W. Surdi,**

Acting Director, Office of Fisheries  
Conservation and Management, National  
Marine Fisheries Service.

[FR Doc. 95-13858 Filed 6-2-95; 9:22 am]

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## Patent and Trademark Office

### Determination of New Expiration Dates of Certain Patents

**AGENCY:** Patent and Trademark Office, Commerce.

**ACTION:** final Determination.

**SUMMARY:** The Patent and Trademark Office (PTO) has determined the expiration date of patents that:

- (1) Are in force on June 8, 1995, and, therefore, are entered to the greater of a term of 20 years from their relevant filing date, or 17 years from grant, and
- (2) Have received a term extension under section 155 or 156 of title 35, United States Code, or will receive a term extension under section 156 in the future.

All patents falling in this category are entitled to the longer term of either (a) 17 years from grant, supplemented by the period of extension obtained under

section 155 or 156, or (b) 20 years from their relevant filing date.

**FOR FURTHER INFORMATION CONTACT:**

H. Dieter Hoinkes, by telephone at (703) 305-9300, by facsimile at (703) 305-8885, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** Under section 156 of title 35, United States Code, patent term extensions are issued for eligible patents from the original expiration date of the patent. Since this provision was enacted in 1984, the PTO has issued 195 certificates of patent term extension in accordance with section 156. Under the Uruguay Round Agreements Act ("URAA"), Public Law 103-465, patents in force on June 8, 1995, are entitled to a patent term of 17 years from grant or 20 years from their earliest filing date, whichever is greater (See 35 U.S.C. 154(c)(1)).

On February 16, 1995, the PTO held a public hearing to elicit comments on what action it should take regarding patents that are entitled to a longer patent term under the URAA and that had previously been extended under section 156. (See 60 FR 3398 (Jan. 17, 1995)). After having considered all the comments, both written and oral, the PTO requested public comments on its intent to publish the new expiration date of all patents that fall into the category mentioned above (See 60 FR 15748 (March 27, 1995)), using the following three criteria:

- (1) A patent that would have expired under the original 17-year patent term before June 8, 1995, but that has received a patent term extension for a period beyond June 8, 1995, is a patent "in force" on June 8, 1995, even though the rights derived from that patent are circumscribed by section 156(b) of title 35.

- (2) The "original expiration date of the patent" referred to in section 156(a) of title 35 is the date on which the patent would have expired if it had not been extended under section 156 to expire at a later date. Therefore, the "original expiration date" of the patents under consideration is the date on which the 20-year term from filing expires.

- (3) The extension already issued on the basis of the 17-year term is added to the 20-year term, subject to the limitation by imposed by section 156(c)(3) of title 35. That provision limits the period remaining in the term of an extended patent to fourteen years counted from the date on which the product under review received approval

for commercial marketing by the relevant regulatory authority.

After analyzing the written comments received regarding the PTO's proposed intent to determine the expiration dates of the relevant patents, taking into account the three criteria noted above, it has been concluded that criterion (2) is in error and that, therefore, the steps outlined in criterion (3) are not an appropriate course of action. The provisions of section 156 cannot be applied *in vacuo* without obtaining results that could not have been intended by the URAA or that are inconsistent with section 156 itself.

The entire argument in favor of adding an extension obtained under section 156 to a 20-year term obtained under the URAA, was the manner of interpreting the provision in section 156(a), requiring that the term of a patent be extended from its "original expiration date". The term "original expiration date" was proposed to be the date of a patent's expiration without the aid of an extension period, which was proposed to be the end of the 20-year term for those patents entitled to such term.

This narrow interpretation of section 156, however, did not take into account that the term "original" has several meanings, all of which must be taken into consideration to avoid an improper interpretation of the relationship between section 154(c)(1), added to title 35 by the URAA, and section 156, enacted in 1984. To that end, considering the expiration of the longer 20-year term to be *the* original expiration date, ignores the fact that when the patent was issued, it originally had an expiration date of 17 years from grant. That date must continue to be considered "original" for two reasons.

One is, that this was the date on which the patent, when granted, was set to expire. Accordingly, if a patent is now entitled to a longer 20-year term, such is merely an added time period beyond the original expiration date. The other reason is the impossibility of having more than one "original expiration date" without having to refer to one as the first "original" and to the other as the second or new "original", the latter being a contradiction in terms.

Had criteria (2) and (3) been adopted, additional anomalies would have arisen. For example, the term "original expiration date" means the date on which a patent would have expired without the extension added by section 156. In the case of many patents in question, their being in force on June 8, 1995, and their entitlement, therefore, to the longer term of 20 years from filing, was solely due to an extension of the