

**SUMMARY:** On October 17, 1996, the Director of the Massachusetts Division of Marine Fisheries submitted to NMFS an application for a general incidental take permit under the Endangered Species Act (ESA) for northern right whales incidental to commercial fishing activities within Massachusetts' territorial waters and a small take authorization for the same species and activity under the Marine Mammal Protection Act (MMPA). For the reasons discussed in this document, that application has been denied.

**ADDRESSES:** Copies of the application, letter, and/or Federal Register notices mentioned in this document may be obtained by writing to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-2337, or by telephoning one of the contacts listed below (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead or Victoria Cornish, NMFS (301) 713-2322.

**SUPPLEMENTARY INFORMATION:**  
Background

On December 5, 1996 (61 FR 64500), NMFS noted that the Commonwealth of Massachusetts (Massachusetts) had submitted an application under the MMPA for a small take of northern right whales (*Eubalaena glacialis*) incidental to commercial fishing activities within Massachusetts, territorial waters, in particular Cape Cod Bay, during the months of February through May. This application was in response to an order dated September 24, 1996, in *Strahan v. Linnon* wherein the presiding District Court judge ordering Massachusetts to apply, under the MMPA, for a small take of northern right whales. In its letter, Massachusetts also requested a general incidental take permit for the northern right whale under either section 7(b)(4) or section 10(a)(1)(b) of the ESA. NMFS stated in that Federal Register notice that while the Agency does not consider the application to be complete in either its discussion of the interaction, or planned mitigation, and while it does not plan to begin processing the application until it is complete and Massachusetts has submitted its Take Reduction Plan (TRP) for northern right whales, NMFS was offering the public an advance opportunity to review and comment on the application and the issues. However, no comments were received during the 30-day comment period.

#### Issues

For a discussion of the issues, please refer to the notice of receipt of the application (61 FR 64500, December 5, 1996).

#### Determination

On January 28, 1997, in a letter to Massachusetts, NMFS determined that it was not appropriate to consider authorizing the State's potential incidental take of right whales by commercial fishing through a permit application process. NMFS may issue authorizations for the incidental taking of endangered and threatened species under section 101(a)(5)(E) of the MMPA upon its own initiative to fishers operating in commercial fisheries if negligible impact findings can be made. NMFS may reevaluate determinations under this provision if there is a significant change in the information used in making the original determinations. NMFS also reevaluates its negligible impact determinations after 3 years, as required by statute.

In making negligible impact determinations, NMFS considers the serious injury and mortality from all commercial fishery operations. On August 31, 1995 (60 FR 45399), NMFS stated that it was unable to make a negligible impact determination with respect to impacts of commercial fisheries on right whales. Although Massachusetts has developed a TRP since the August 1995 notice was issued, NMFS has concluded that no significant new information has been submitted to cause the Agency to reconsider this determination. Since NMFS cannot make a negligible impact determination, an incidental take authorization under section 101(a)(5)(E) is not appropriate.

In regard to Massachusetts' application for an incidental take permit under section 7(b)(4) of the ESA, NMFS does not consider it appropriate for a state or private party to apply for an Incidental Take Statement under section 7(b)(4) of the ESA as this section applies only to Federal actions. Issuance of a section 101(a)(5)(E) permit is considered a Federal action, however, and would be subject to consultation. If appropriate, a section 7 Incidental Take Statement would be issued in association with this consultation. Therefore, an incidental take permit under section 10 is determined to be unnecessary. While NMFS has determined that the Massachusetts application for an incidental take under section 7 or 10 is inappropriate, NMFS has encouraged Massachusetts to provide information regarding state fishing activities that

would be useful in conducting appropriate consultations.

Accordingly, for the reasons stated above, on January 28, 1997, NMFS informed Massachusetts that it was inappropriate to proceed, as requested by Massachusetts, to process MMPA and ESA applications.

Dated: January 30, 1997.

Patricia A. Montanio,  
*Acting Director, Office of Protected Resources,  
National Marine Fisheries Service.*  
[FR Doc. 97-2794 Filed 2-4-97; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act; Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, February 10, 1997.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202-418-5100.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 97-2987 Filed 2-3-97; 2:08 pm]

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### Sunshine Act; Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, February 3, 1997.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Adjudicatory Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202-418-5100.

Jean A. Webb,

*Secretary of the Commission.*

[FR Doc. 97-2988 Filed 2-3-97; 2:08 pm]

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### Sunshine Act; Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 2:00 p.m., Monday, February 24, 1997.