

whales) and the United States (for a total of 20 whales). In 1998 and 1999, NOAA granted an allocation of up to five whales a year to the Makah Indian Tribe, whose subsistence and ceremonial needs had been the foundation of the U.S. request to the IWC.

U.S. Congressman Jack Metcalf, Breach Marine Protection, and several other plaintiffs brought a lawsuit, *Metcalf v. Daley*, in October 1997, alleging that the U.S. Government had violated the National Environmental Policy Act (NEPA), the Whaling Convention Act, and other statutes. In September 1998, the U.S. District Court for the Western District of Washington ruled in favor of the U.S. Government on all issues.

On June 9, 2000, the Ninth Circuit Court of Appeals overturned one aspect of that decision, ruling that the 1997 EA should have been completed before the U.S. and the Makah Tribe entered into a cooperative agreement. That agreement had provided that, if the Tribe prepared an adequate needs statement documenting a cultural and subsistence need to harvest gray whales, NOAA would request a quota of gray whales from the IWC. Two judges on a three-judge panel held that the timing of the EA, which was completed after the 1996 agreement was signed and before the 1997 annual meeting of the IWC, may have predisposed the preparers to find that the whaling proposal would not significantly affect the environment. The Court ordered NOAA to set aside that finding and comply with NEPA under circumstances that would ensure an objective evaluation of the environmental consequences of the gray whale harvest.

Following the Court action, NOAA rescinded its cooperative agreement with the Makah Tribe on August 11, 2000. NOAA subsequently set the gray whale quota for 2000 (65 FR 75186, December 1, 2000) and 2001 (65 FR 14862, March 14, 2001) at zero, pending completion of its NEPA analysis.

NEPA requires that Federal agencies conduct an environmental analysis of their actions to determine if the actions may affect the environment. Accordingly, NMFS prepared a draft EA, published on January 12, 2001, conducted a public hearing in Seattle, WA on February 1, 2001, and held a 30-day public comment period to allow for public input on the Draft EA. This final EA explores the environmental

consequences of four alternatives: (1) grant Makah Tribe the IWC quota with restrictions that allow a limited hunt on the Pacific coast feeding aggregation; (2) grant Makah Tribe the IWC quota with restrictions to target hunt on migrating whales (similar to the 1999 regime); (3) grant Makah Tribe the IWC quota without time-area restrictions; and (4) (no action) - do not grant Makah Tribe the IWC quota. NMFS has identified the preferred alternative as alternative 1, which will grant the Makah Tribe the IWC quota of five whales per year with restrictions that would allow a limited hunt on the gray whale summer feeding aggregation.

This EA was prepared in accordance with NEPA and implementing regulations at 40 CFR parts 1500 through 1508 and NOAA guidelines concerning implementation of NEPA found in NOAA Administrative Order 216-6.

Dated: July 13, 2001.

Don Knowles,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070201B]

Marine Mammals; File No. 116-1477

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that SeaWorld, Inc., 7007 Sea World Drive, Orlando, FL 32821-8097 (Principal Investigator: Dudley Wigdahl, SeaWorld of Texas) has been issued an amendment to scientific research and enhancement Permit No. 116-1477 to take Hawaiian monk seals, *Monachus schauinslandi*, for scientific research purposes.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s): see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, 301/713-2289.

SUPPLEMENTARY INFORMATION: On May 21, 2001, notice was published in the **Federal Register** (66 FR 27941) that a request for an amendment to scientific research and enhancement Permit No. 116-1477, to take Hawaiian monk seals, *Monachus schauinslandi*, had been submitted by the above-named organization. The requested amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217-227).

Issuance of this permit amendment, as required by the ESA, was based on a finding that such permit amendment (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

The permit amendment and related documents are available for review in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376;

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213; phone (562) 980-4001; fax (562) 980-4018;

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432; phone (727) 570-5301; fax (727) 570-5320; and

Protected Species Program Manager, Pacific Islands Area Office, 1601 Kapiolani Blvd., Room 1110, Honolulu, HI 96814-4700; phone (808) 973-2935; fax (808) 973-2941.

Dated: July 13, 2001.

Ann D. Terbush,

*Chief, Permits and Documentation Division,
Office of Protected Resources, National
Marine Fisheries Service.*

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