

missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

For further information contact: Mr. Thomas Nisbet, U.S. Department of Commerce, telephone 202-482-5657, or e-mail [Tom\\_Nisbet@ita.doc.gov](mailto:Tom_Nisbet@ita.doc.gov)

Dated: January 9, 2003.

**Thomas H. Nisbet,**

Director, Export Promotion Coordination, Office of Planning, Coordination and Management.

[FR Doc. 03-865 Filed 1-14-03; 8:45 am]

BILLING CODE 3510-DR-P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Jointly Owned Invention Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of jointly owned invention available for licensing.

**SUMMARY:** The invention listed below is jointly owned by the U.S. Government, as represented by the Department of Commerce, and JMAR Research, Inc. The Department of Commerce's ownership in this invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301-975-4188, e-mail: [mclague@nist.gov](mailto:mclague@nist.gov), or fax: 301-869-2751. Any request for information should include the NIST Docket number and title for invention as indicated below.

**SUPPLEMENTARY INFORMATION:** NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is: [Docket No.: 99-027US]

*Title:* Parallel X-ray Nanotomography.

*Abstract:* An apparatus for nanotomography uses an x-ray source comprising a laser generated plasma. X-rays generated in the x-ray source are collected and focused using a collector

optic onto a sample. The collector optic is preferably comprised of Wolter optics combining reflection off an ellipsoid with a reflection off a hyperboloid. X-rays emitted from the sample are focused with an objective lens assembly. The objective lens assembly includes an array of fresnel zone plates. An image formation and acquisition apparatus form an image based on the received X-rays. The array of fresnel zone plates is an important feature of the invention, as the array dramatically improves the intensity of the x-rays reaching the detector over a conventional objective lens. A laser-based x-ray source is also key to the invention, generating an x-ray beam of sufficient intensity to provide sufficient counting statistics for a tomographic reconstruction to be obtained.

Dated: January 8, 2003.

**Karen H. Brown,**

Deputy Director.

[FR Doc. 03-774 Filed 1-14-03; 8:45 am]

BILLING CODE 3510-13-P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

#### Manufacturing Extension Partnership National Advisory Board

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, January 30, 2003, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program with over 60 centers across the country serving America's 360,000 small manufacturers. The centers are true federal state partnerships using federal, state and local funds to provide services. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP and for the Board to discuss future strategic direction of

the program and its current plans. The agenda will include a briefing on the state and health of the system under the current state of the budget while under a continuing resolution, a report on the National Brand Meeting in December 2002 and the status across the system and a new direction at MEP to set up a Research team to delve into the area of the importance of manufacturing in the U.S. economy. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Monday, January 27, and she will provide you with instructions for admittance. Mrs. Peter's email address is [carolyn.peters@nist.gov](mailto:carolyn.peters@nist.gov) and her phone number is 301/975-5607.

**DATES:** The meeting will convene January 30, 2003 at 8 a.m. and will adjourn at 3:30 p.m. on January 30, 2003.

**ADDRESSES:** The meeting will be held in the Employee's Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

**FOR FURTHER INFORMATION CONTACT:** Linda Acierto, Senior Policy Advisor, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899-4800, telephone number (301) 975-5033.

Dated: January 8, 2003.

**Karen H. Brown,**

Deputy Director.

[FR Doc. 03-775 Filed 1-14-03; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Doc. No. 030109006-3006-01, I.D. 010903B]

#### Taking and Importing of Marine Mammals; Decision Regarding the Impact of Purse Seine Fishing on Depleted Dolphin Stocks

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

**ACTION:** Notice.

**SUMMARY:** This Notice announces that on December 31, 2002, the Assistant Administrator for the National Marine Fisheries Service, on behalf of the

Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the Eastern Tropical Pacific Ocean (ETP). This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States.

**DATES:** This finding became effective December 31, 2002.

**FOR FURTHER INFORMATION CONTACT:** Nicole R. Le Boeuf, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Silver Spring, Maryland, 20910. 301-713-2322, ext. 156.

**SUPPLEMENTARY INFORMATION:** The Marine Mammal Protection Act and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act, require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP.

On December 31, 2002, the Assistant Administrator for the National Marine Fisheries Service, on behalf of the Secretary of Commerce, determined that the chase and intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. A copy of the finding and the rationale supporting the finding are set forth below. Copies of supporting documentation referenced in the rationale may be found on the Internet at [http://www.nmfs.noaa.gov/prot\\_res/PR2/Tuna\\_Dolphin/tunadolphin.html](http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolphin.html).

This finding determines the definition of dolphin-safe for tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. As a result of this finding, the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested.

**DATES:** This finding was effective December 31, 2002.

Dated: January 9, 2003.

**William T. Hogarth,**

*Assistant Administrator, National Marine Fisheries Service.*

**Final Finding Required by the Dolphin Protection Consumer Information Act, 16 U.S.C. 1385(g)(2).**

The Dolphin Protection Consumer Information Act (DPCIA) requires the Secretary of Commerce (Secretary) to make a final finding by December 31, 2002 on whether the intentional deployment on or the encirclement of dolphin with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the Eastern Tropical Pacific (ETP) region. 16 U.S.C. 1385(g)(2) The authority to make the finding has been delegated to the NOAA Assistant Administrator for Fisheries. Based on the information reviewed, I hereby find the intentional deployment on or encirclement of dolphin with purse seine nets in not having a significant adverse effect on any depleted dolphin stock in the ETP.

**Summary**

Since the late 1950's, the predominant tuna fishing method in the ETP has been to encircle schools of dolphins with a purse seine fishing net to capture the tuna concentrated below. Hundreds of thousands of dolphins died as a result of this practice in the early years of this fishery. Marine Mammal Protection Act (MMPA) provisions, improved fishing techniques, and international cooperation have resulted in greatly reduced dolphin mortality.

In 1997, the MMPA and the DPCIA were amended by the International Dolphin Conservation Program Act (IDCPA), to require the Secretary to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP. This finding changes the dolphin-safe labeling standard as it applies to tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons and sold in the United States. The finding must be made by December 31, 2002, and the research findings must be submitted to Congress within 90 days.

To arrive at a finding, NOAA Fisheries, in consultation with the Marine Mammal Commission (MMC) and the Inter-American Tropical Tuna Commission (IATTC), conducted "a study of the effect of intentional

encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the ETP." Based on the research results and the other best available information, I have concluded that the intentional deployment on or encirclement of dolphins with purse seine nets is not having a significant adverse impact on depleted dolphin stocks in the ETP. This finding means that the dolphin-safe labeling standard shall be that prescribed by section (h)(1) of the DPCIA. Therefore, dolphin-safe means that dolphins can be encircled or chased, but no dolphins can be killed or seriously injured in the set in which the tuna was harvested. This finding will become effective immediately.

A **Federal Register** Notice will be published containing more information on this finding. The Final Science Report will be submitted to Congress within 90 days.

December 31, 2002.

**William T. Hogarth, Ph.D.,**

*Assistant Administrator for Fisheries.*

**Organized Decision Process (ODP) Development and Analysis**

*Background*

The Marine Mammal Protection Act (MMPA) and the Dolphin Protection Consumer Information Act (DPCIA), as amended by the International Dolphin Conservation Program Act (IDCPA), require the Secretary of Commerce to conduct specified scientific research and make a finding, based on the results of that research, information obtained under the International Dolphin Conservation Program (IDCP), and any other relevant information, as to whether or not the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). The Secretary's finding serves as the basis for determining the definition of "dolphin-safe" as applicable to tuna harvested by purse seine vessels with carrying capacities of greater than 400 short tons operating in the ETP. Further, the DPCIA required the Secretary to make an initial finding in 1999, and a final finding no later than December 31, 2002.

On April 29, 1999, the National Marine Fisheries Service (NOAA Fisheries), on behalf of the Secretary, made an initial finding that there was insufficient evidence at that time to determine whether the deployment on and encirclement of dolphins by the

tuna purse seine fishery was having a significant adverse impact on any depleted dolphin stock in the ETP (64 FR 24590). Also in 1999, NOAA Fisheries submitted a Report to Congress containing the preliminary research findings to support that initial finding. That Report also described a decision analysis framework to evaluate quantitatively the various types of information gathered in the required studies in order to make the initial finding. The U.S. District Court for the Northern District of California, in *Brower v. Daley*, 93 F. Supp. 2d 1071 (N. D. Ca. 2000), set aside the 1999 determination, and that ruling was affirmed by the Ninth Circuit Court of Appeals in *Brower v. Evans*, 257 F. 3d 1058 (9th Cir. 2001).

The final research results provide substantially more information to support the final finding than was available for the initial finding in 1999. Some of this new information includes: updated dolphin abundance data, updated mortality estimates based on observer data, an updated review of scientific literature on stress in marine mammals, results from a necropsy study of dolphins killed in the fishery, a review of historical demographic and biological data related to dolphins involved in the fishery, results from the chase-recapture experiment, as well as information regarding variability in the biological and physical parameters of the ETP ecosystem over time. In making the final finding, all research required by the IDCPA was completed and considered.

To accommodate this newly available scientific information and ensure transparency in the development of its decision, NOAA Fisheries revised its decision-making process for the final finding. On February 15, 2002, NOAA Fisheries published a proposed Organized Decision Process (ODP) in the **Federal Register**. The ODP was designed to establish a framework for making the final finding. Comments were received on this proposal from the Inter-American Tropical Tuna Commission (IATTC), the Marine Mammal Commission (MMC), environmental organizations, the U.S. and the foreign tuna industries, members of the public, the U.S. Departments of State and Justice, two members of the U.S. Congress, and several foreign nations, among others. After careful consideration of these comments, NOAA Fisheries made revisions, as appropriate, and, on August 23, 2002, adopted a final ODP.

The ODP differs from the previous decision framework primarily in that it takes into account different levels of

uncertainty inherent in research of this nature. The ODP allows the Secretary to consider many different types of the information in light of the uncertainty and appropriately weigh the information based on the level of confidence that exists for the information. The ODP is also distinct from NOAA Fisheries' earlier decision framework in that it includes a mechanism for weighing information based on high standards for determining what is the best information available. As prescribed by the ODP, the weight given to the available scientific information will be determined by the degree to which it meets the following elements: (1) Relevance, (2) timeliness, (3) passed independent peer-review, and (4) available to NOAA Fisheries for verification.

The ODP defined the terms included in the weighting criteria. "Relevance" was defined to mean the scientific information is pertinent to the use of the information. "Timeliness" was defined to mean the relevancy of scientific information least degraded by the passage of time. "Passed independent peer review" was defined to mean the scientific information has been published in a refereed scientific journal in its field or independently read and criticized in writing by at least two peers; the criticism was disposed of either by acceptance or rebuttal, as appropriate by the author(s); and the disposition of the criticism by the author(s) was independently determined to be appropriate and adequate. Verification was defined to mean that the data, procedures, methods, equipment, mathematics, statistics, models, computer software, and anything else used to produce the scientific information are to be submitted to NMFS in a timely manner such that the scientific information may be replicated or rejected. For the final finding, "in a timely manner" was stated in the ODP as being material received as of May 1, 2002.

The NOAA Fisheries' ODP considers separate measures of fishery and environmental effects on dolphins, consisting of a series of questions for consideration in reaching the final finding. They are as follows: (1) The Ecosystem Question; (2) the Direct Mortality Question; (3) the Indirect Effects Question; and (4) the Growth Rate Question. For the Direct Mortality and the Growth Rate Questions, there are basic thresholds in the ODP that result in a "yes" or "no" answer. If the answer to the Direct Mortality Question is "yes", then the Secretary will conclude that the fishery is having a significant adverse impact. Similarly, if

the answer to the Growth Rate Question is "no", then the Secretary will conclude that the fishery is having a significant adverse impact. Conversely, a "no" and a "yes" answer, respectively, would result in a finding of no significant adverse impact. For the Ecosystem and the Indirect Effects Questions, the Secretary will review the available information as well as the evidence presented by members of two expert panels in reaching final conclusions. The questions found in the ODP, along with the information used to reach the appropriate answers and rationale for each, are found below.

#### *Research Conducted Pursuant to Section 304(a) of the MMPA*

Pursuant to section 304(a) of the MMPA, NOAA Fisheries completed four years of specified research to support the Secretary's finding regarding the impact of the tuna purse seine fishery on depleted dolphin stocks in the ETP, in consultation with the MMC and the IATTC. The research program was broadly structured to include four components: abundance estimation, ecosystem studies, stress and other fishery effect studies, and stock assessment. The results of the required research were subjected to rigorous, independent peer reviews to ensure that the Secretary is provided with information of the highest caliber in making the final finding. NOAA Fisheries will submit these results in its Final Science Report to Congress within 90 days of the finding. A brief summary of each of the major categories of research follows.

*Abundance Estimation.* Knowledge of dolphin population levels is key to understanding the overall status of these stocks. Current dolphin abundance estimates were derived from research vessel surveys conducted in the ETP during 1998, 1999, and 2000, using improved analytical methods for abundance estimation. Survey data from nine earlier abundance surveys dating back to 1979 were also re-analyzed using these new methods. This time series of abundance estimates provides the core information for evaluations of trends, population growth rates, and ultimately stock assessment analyses for the three depleted dolphin stocks.

*Ecosystem Studies.* For a long-lived animal such as a dolphin, carrying capacity is more likely to be affected by long-term (over decades) changes rather than those occurring short-term (inter-annual or seasonal). NOAA Fisheries' ecosystem studies focused on investigations of temporal variation in as many parts of the ETP ecosystem as possible. These included physical and

biological oceanography, a range of trophic levels from the lowest (phytoplankton) to the highest (top predators), and as many species within each trophic level as possible.

*Stress and Other Indirect Fishery Effects.* Stress studies are also mandated by the MMPA amendments to address the concern that chase and encirclement during fishing operations might affect dolphins in ways that might not necessarily result in their immediate and observable death in the nets, but that could impede recovery. These are often called "cryptic" effects. Four related research projects generally termed "stress studies" were specifically required by U.S. law to study the effect of intentional encirclement on dolphins and dolphin stocks: a stress literature review, a necropsy study, a review of historical data, and a field study involving the repeated chasing and capturing of dolphins. The key lines of investigation included research on potential separation of dolphin cows and calves, measurement of acute and chronic physiological effects that could result in injury or death, observation of behavioral responses to fishing activities, and estimation of the average number of times a dolphin might be chased and encircled per-year per-stock.

*Stock Assessments.* The final component of the research, the stock assessment modeling, provides quantitative estimates of dolphin population growth rates and depletion levels, as well as a framework for testing hypotheses about the effects on dolphins of changes in carrying capacity and potential fishery effects. Of primary interest was an evaluation of the current population size relative to the population size that can be sustained by the ecosystem in the absence of human-induced mortality. This has a direct bearing on the potential rate of recovery for these depleted stocks and provides a means of evaluating the observed population growth rate in the context of the ecosystem and uncertainties associated with the estimates of abundance and mortality. Unfortunately, this question cannot be addressed for coastal spotted dolphins because historical estimates of mortality and abundance are not available for this stock.

#### *Information Obtained Under the IDCP and Other Relevant Information*

Pursuant to the MMPA, the Secretary is also required to consider "information obtained under the IDCP" and "other relevant information" when making the final finding. To this end, NOAA Fisheries worked with the

IATTC to obtain various types of information relevant to this decision. This information included data on the number of dolphin sets made by the fishery and dolphin mortality reported by the IATTC observer program, among other things.

NOAA Fisheries also invited interested members of the public to submit such information for consideration. In order to properly assess and evaluate this outside information with sufficient time for making the finding by the date required in the statute (December 31, 2002), the deadline for submission of information was May 1, 2002. For the purposes of weighing outside information, NOAA Fisheries determined that information submitted by the deadline was submitted in a timely manner and is given greater weight than information that was submitted after this deadline. There was only one submission of outside scientific information by May 1, 2002. This consisted of a review by the IATTC of three previously published NOAA Fisheries papers on the subject of dolphin stress and other indirect effects of the tuna purse seine fishery on dolphins. NOAA Fisheries considers the review relevant, since it was received in a timely manner and was able to be evaluated and verified. The document is currently under review with a scientific journal, but otherwise has not been independently peer reviewed.

NOAA Fisheries submitted its Final Science Report to the IATTC and the MMC for their review as a mechanism by which to provide the Secretary with the best information in making the final finding. NOAA Fisheries received general comments from the MMC. The IATTC submitted comments pertaining to the NOAA Fisheries Science Report, as well as additional information and analyses. NOAA Fisheries considers this information relevant, although it was not able to thoroughly evaluate and verify the information. NOAA Fisheries did, however, prepare a cursory assessment of the IATTC's comments for consideration. In summary, the IATTC's comments include in-depth analyses of relevant information and specific comments pertaining to the analysis and interpretation of information by NOAA Fisheries. The IATTC's response also concludes that the fishery is not having a significant adverse impact on depleted dolphin stocks in the ETP. The MMC's comments concluded that there is insufficient evidence to determine that the fishery is not having a significant impact on depleted stocks and that there is only inconclusive evidence that the intentional chase and encirclement of dolphins by the fishery is having

adverse impacts on the recovery of dolphin stocks. While this information is relevant and was considered in making the finding, it cannot be weighed as heavily as the information contained in NOAA Fisheries' Final Science Report.

#### *Expert Panels*

NOAA Fisheries appointed two panels of independent scientific experts to provide individual opinions regarding the answers to the Ecosystem and the Indirect Effects questions as a means of assisting in answering the two questions in the ODP for which there are the most complex and/or uncertain data (67 FR 31279). The panelists were nominated by the public, with the help of several scientific and professional societies, and were chosen by a committee of individuals which included representatives from NOAA Fisheries, the IATTC, the MMC, and an independent scientific body. The individual experts based their opinions on a review of the results from the required research program, information obtained under the IDCP, and other relevant information, along with the expert knowledge that these individuals possess as leaders in their respective fields.

#### *Analysis*

*The Ecosystem Question.* During the period of the fishery, has the carrying capacity of the ETP for dolphins declined substantially or has the ecological structure of the ETP changed substantially in any way that could impede depleted dolphin stocks from growing at rates expected in a static ecosystem? Or has the carrying capacity increased substantially or has the ecological structure changed in any way that could promote depleted dolphin stocks to grow at rates faster than expected in a static ecosystem?

Changes in an ecosystem can fundamentally affect the carrying capacity of a species that inhabits that ecosystem. Changes that adversely affect the habitat of a species, including its prey, likely will result in a decrease in the carrying capacity of that species. For depleted species, such adverse changes also will likely slow the rate at which these species recover.

Because substantial changes in an ecosystem can affect a depleted population or stock's recovery, the ODP considers scientific evidence of whether a significant ecosystem change has occurred in the ETP and if so, how that change may be impacting depleted dolphin stocks. In considering the possible effects of ecosystem changes, NOAA Fisheries collected or reviewed

physical and biological oceanography data, including information on a range of trophic levels from the lowest (phytoplankton) to the highest (top predators), and as many species within each trophic level as possible. NOAA Fisheries also solicited the opinions from members of a separate Ecosystems Panel, comprised of independent scientific experts in biological oceanography and ecology.

Available scientific information reveals the existence of periodic, low frequency changes within the ETP. These longer, decadal-changes are evident from sea surface temperature data beginning in 1901. Notably, a shift occurred in the late 1970s that was detected throughout the Pacific Ocean. Changes at that time in the physical environment and in biological communities were clearly documented in the North Pacific Ocean. In the ETP, this shift resulted in a warming of less than 1°C. Coincident with increase in temperature in the ETP, there was a weakening of trade winds and a small change in surface chlorophyll. No other responses to this late 1970s shift have been reported, but biological data prior to 1976 are sparse or currently unavailable in a form that would allow comparisons with more recent data.

In addition to periodic, low-frequency ecosystem changes, the ETP ecosystem is periodically affected by the El Niño/Southern Oscillation (ENSO), which occurs on two to seven year periods. All investigations by NOAA Fisheries indicated that variability associated with ENSO events is the predominant variability throughout the ecosystem, having a much greater effect than periodic decadal-scale changes. These ecosystem changes are in part supported by analyses of data on prey fishes, squids, and seabirds collected by NOAA Fisheries during dolphin surveys since 1986. The broader significance of these changes, however, is limited given the absence of comparable data prior to the early 1980s.

NOAA Fisheries' research indicates that dramatic reductions in carrying capacity caused by ecosystem changes is considered unlikely. If an ecosystem change dramatic enough to impact dolphin stocks had occurred, it is unlikely that the only animals affected would be dolphins. Data on a wide range of habitat variables and species were collected, beginning in 1986, as part of the NOAA Fisheries dolphin assessment cruises. No dramatic shifts were detected. However, NOAA's ability to determine existence and magnitude of ecosystem changes in the ETP, together with the effect of those changes upon depleted stocks, is significantly

limited by a paucity of relevant scientific information. Questions remain as to the actual carrying capacity of depleted stocks under even optimal conditions. Additionally, there are few data available concerning the ETP ecosystem prior to the late 1970s, hindering the ability to examine low frequency ecosystem changes and their effect on depleted marine mammal stocks. Assessments are further limited by the possibility that even small changes in background physical conditions can have large effects upon species within that ecosystem.

The potential effect of ecosystem changes was addressed by the five members of the Ecosystem Panel, each of whom had significantly different expertise to bring to bear on their individual opinions. The Ecosystem Expert Panel members' assessments were based on their review of the NOAA Fisheries Final Science Report, and relevant oceanographic and ecosystem data from the period of the fishery.

All experts agreed that historical surface temperature data indicate that since the mid 1970s, the Pacific Ocean has been in a warm phase of the Pacific Decadal Oscillation (PDO). Within the ETP, this PDO cycle has resulted in a surface temperature increase of 2 degrees centigrade above temperatures documented during a cold phase which occurred in the 1950s and 1960s. (Report of Michael Landry). While increased temperatures may result in some positive effects, most experts agreed that temperature increases would result in a deeper thermocline, which in turn would reduce the availability of prey species for depleted marine mammals.

In addition to ecological changes brought on by PDO, experts also noted environmental changes attributable to ENSO. Like PDO, changes associated with ENSO result in increased surface water temperatures. Evidence indicates that prey fish are substantially depressed during ENSO. (Reports of Read, Landry, and Stewart).

According to these experts, the extent to which these PDO and ENSO warming cycles have affected depleted marine mammal stocks is unknown, but potentially significant. One expert concluded that it is unlikely that the ecological structure of the ETP has changed substantially in a way that could significantly impede or promote the population growth of depleted stocks. (Report of Andrew Read). Others, expressed a different view. In Landry's view, "such changes provide a credible explanation for at least part of the observed slow recovery of dolphin stocks \* \* \*." In the view of Stewart,

"the argument is persuasive that the carrying capacity of the ETP, relative to the ecologies and life histories of northern offshore spotted dolphins and eastern spinner dolphins, is lower now (and the past several or more years), that [sic] it was prior to and during the early phase of the fishery." Moreover, Stewart concludes that depleted stocks had begun to recover after direct mortality declined below the replacement rate in the 1980s, but that this recovery may have been interrupted by warm water events in the 1990s. Barber notes that, "There are indications that the biological productivity of the ETP has changed in response to the low-frequency physical variability known as PDO. These indications, while speculative, require that we not rule out the possibility that the carrying capacity of the ETP for dolphins has declined and that this decline has affected recovery of the population. \* \* \* We also cannot rule out the possibility that the ecological structure of the ETP has changed substantially in a way that could impede the recovery of the dolphin stocks."

Panel experts agree with NOAA's view that there is insufficient information to adequately assess the existence or magnitude of ecosystem changes, or the extent to which these changes have impacted depleted dolphins. As one expert noted, "\* \* \* we do not have a sufficient understanding of the structure or function of the ETP ecosystem to answer this question. Our knowledge of the ecological interactions of dolphins and other ecosystem components, including yellowfin tuna, is so rudimentary that in most cases, we cannot predict whether a particular environmental change might promote or impede the population growth of dolphins. Furthermore, we do not have a sufficient time-scale of observations to allow tests of hypotheses regarding such ecological changes and their effects." (Report of Andrew Read).

Comments of the IATTC state that between 1986–1990 and 1998–2000, population surveys indicate that large numbers of non-depleted dolphins moved into the fishery off Central America. By competing for common food sources, this migration could have significantly affected the carrying capacity of depleted dolphins and hindered recovery. The MMC commented that available information is insufficient to support a conclusion that ecosystem changes have impacted dolphin recovery, but the MMC provided no additional information on this point.

Based upon the above information, remaining data gaps, and expert opinions, NOAA Fisheries cannot determine whether the carrying capacity of the ETP for dolphins has declined substantially or that the ecological structure of the ETP has changed substantially in a way that could impede depleted dolphin stocks from growing at rates expected in a static ecosystem.

*The Direct Mortality Question.* For any depleted stock, does the estimate of the total fishery-attributed dolphin mortality, obtained by adding together estimates of direct mortality and, where appropriate, quantifiable levels of indirect mortality, exceed the mortality standard considered appropriate by the Secretary?

Direct mortality as reported by observers is a known and easily quantifiable impact of the tuna purse seine fishery on depleted ETP dolphin stocks. To answer this question, NOAA Fisheries calculated the potential biological removal (PBR) levels for each depleted dolphin stock in the ETP. The PBR is the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population size. Direct mortality and estimates of indirect mortality (where appropriate) were compared to the PBR levels and other mortality standards for each stock. Additionally, possible changes in the carrying capacity and/or the ecosystem structure of the ETP were considered but deemed scientifically inconclusive.

The ODP calls for comparison between the level of direct mortality and a "mortality standard considered appropriate by the Secretary." The ODP therefore allows flexibility in determining what the threshold should be, specifically because the results of analyses on indirect mortality as well as ecosystem changes might have called for a threshold lower than PBR. For example, if there had been sufficient sample sizes to make population-level inferences of the impact of indirect effects, and/or if there had been strong evidence of a dramatic reduction in carrying capacity due to ecosystem changes, then a level of mortality close to PBR might have been considered too high.

The average of the abundance estimates for the most recent surveys are 641,153 northeastern offshore spotted dolphins, 448,608 eastern spinner dolphins, and 143,725 coastal spotted dolphins. The coefficients of variation (CV) for these estimates are approximately 17%, 23%, and 36%,

respectively. CV is a measure of the variability of the estimate. Much of the essential information regarding coastal spotted dolphins is lacking, especially from the early years of the fishery. This lack of information prevents NOAA Fisheries from further refining the precision of this stock's abundance estimation.

Reported levels of dolphin mortality for each stock have been very low in recent years (far less than PBR levels for approximately a decade) and have only rarely exceeded the strict stock-specific mortality limits set forth by the IDCP. These stock mortality limits (SMLs) are roughly 10% of the PBR standard. For this decision, the PBR standard, an established standard of mortality, provides the best insight into the significance of reported mortality to the dolphin stocks. By contrast, SMLs are not strictly science-based values, but rather reflect the lowest possible mortality achievable by the fishery and values that should be biologically insignificant to dolphin stocks. Comparing reported mortality to established standards of mortality, such as the PBR and the SML systems, can provide insight into the significance of reported mortality to the dolphin stocks. In 2001, the most recent year for which annual mortality estimates are available, the total reported mortality was 466 eastern spinner dolphins, 656 northeastern offshore spotted dolphins, and two spotted dolphins. PBR levels during this same time period were for 1298 eastern spinner dolphins, 2367 northeastern offshore spotted dolphins, and 1073 coastal spotted dolphins.

The only source of quantifiable information on levels of indirect mortality comes from investigations into the separation of cow-calf pairs during fishing operations. Analyses of purse seine sets from 1973 to 1990, in which all killed dolphins were examined, led to the conclusion that there is some separation of calves from their mothers. Based on reasonable assumptions about length of nursing dependency, NOAA Fisheries estimated that mortality was underestimated by 10–15% for spotted dolphins and 6–10% for spinner dolphins in this sample. Reported mortality for 2001, when combined with cow-calf separation estimates, is approximately: 31% of PBR for northeastern offshore spotted dolphin and 39% of PBR for eastern spinner dolphin. There is currently no way to quantify indirect mortality for coastal spotted dolphins. Therefore, direct mortality is based on that reported by the on-board observer programs and is only 0.2% of PBR for coastal spotted dolphin. When reported mortality for

2001 is combined with the estimate of cow-calf separation, quantifiable direct mortality is well below the PBR level for each stock.

NOAA Fisheries has a relatively high degree of confidence in both the dolphin abundance estimates and in a minimum estimate of mortality owed to cow-calf separation. Additionally, the IDCP utilizes 100% observer coverage to obtain dolphin mortality information, so unlike most other fisheries around the world, dolphin mortality is enumerated rather than estimated. Based on these data, information regarding dolphin mortality in the fishery obtained through the IDCP, and in consideration of the opinions of the Ecosystem Expert Panel, direct mortality does not exceed PBR, or any other appropriate mortality standard, for any of the depleted dolphin stocks.

*The Indirect Effects Question.* For each stock, is the estimated number of dolphins affected by the tuna fishery, considering data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, and other relevant indirect effects information, at a magnitude and degree that would risk recovery or appreciably delay recovery to its optimum sustainable population (OSP) level (how and to what degree)?

While direct mortality from sources in the tuna fishery causes a known impact on dolphin stocks, there are possible means by which the fishery could be indirectly impacting dolphins. Therefore, an assessment of indirect effects is relevant to making the final finding. Sources of indirect mortality include cow-calf separation and may include other types of effects resulting from chase and capture, which could compromise the health of at least some of the dolphins involved. The answer to this question was based on information collected and/or evaluated by NOAA Fisheries, as well as on opinions of individual members of a panel of independent scientific experts in veterinary science, physiology, and other stress-related fields (the Indirect Effects Panel).

In the aggregate, available data suggest the possibility that purse-seining activities result in indirect effects that negatively impact dolphins. However, available data are insufficient to determine whether the fishery is causing indirect effects of sufficient magnitude to either risk recovery or appreciably delay recovery. Completed research has included a combination of field experiments, retrospective analyses, direct observation, and mathematical modeling, to address a

broad range of stress-related effects and other factors that might lead to unobserved dolphin mortalities. These data, however, are insufficient to quantify potential population-level impacts or determine whether population recovery might be delayed, because sample sizes were small and baseline data unavailable. For example, in implementing a specifically mandated necropsy program that was conducted between 1998 and 2000, it was possible to obtain samples from only 56 dolphins; a number that is insufficient to make population-level inferences. Additionally, a chase-encirclement stress study, was conducted during August and October of 2001. Because of the experiment's complexity and logistical challenges, it was recognized from the outset that sample sizes for the studies would be limited and that population-level inferences were unlikely.

Notwithstanding these data limitations, NOAA Fisheries examined specific indirect effects that may negatively impact dolphin stocks. Specifically, NOAA Fisheries examined the possibility that cow-calf pairs are separated during chase and encirclement, causing the subsequent death of the calf. Analyses of purse-seine sets suggests that some separation occurs. However, more conclusive mortality estimates relative to chase do not exist, as direct observations currently are not feasible. Additional mortality associated with separation is possible in instances where dolphins are chased but not encircled. However, mortality estimates relative to chase do not exist, as direct observations are not feasible. Even if correct, estimates of confirmed indirect dolphin mortality due to cow-calf separation do not substantially increase the total levels of mortality for each stock.

Additionally, NOAA Fisheries investigated the frequency with which the fishery interacts with individual dolphins and with the dolphin stocks as a whole each year. For northeastern offshore spotted dolphins, there are over 5,000 dolphin sets per year, resulting in 6.8 million dolphins chased per year and 2.0 million dolphins encircled per year (on average for 1998–2000). For eastern spinner dolphins, there are about 2,500 sets per year, 2.5 million dolphins chased per year, and 300,000 dolphins encircled per year. For coastal spotted dolphins, there are about 154 sets per year, 284,300 dolphins chased per year, and 39,700 dolphins captured per year. NOAA Fisheries estimated that a northeastern offshore spotted dolphin is chased 10.6 and encircled 3.2 times, an eastern spinner dolphin is chased 5.6

and encircled 0.7, and a coastal spotted dolphin is chased 2.0 times and encircled 0.3 times per year on average. Unfortunately, there is much uncertainty surrounding these statistically estimated averages. Moreover, there are insufficient data to determine the impact of stress and other chase-related effects on dolphin populations. Additional research must be done on this before there will be sufficient data to yield definitive results.

Experts noted that there is inadequate information to make a determination on the existence or extent of indirect effects, as they relate to dolphin recovery. To assist the Secretary in answering this difficult question, a panel of five experts was asked to address the issue of indirect mortality. All five expert panelists indicated that indirect fishery effects, especially cow-calf separation and increased likelihood of predation, may account for the lack of expected dolphin recovery. The strength of their opinions varied greatly, however, noting the large amounts of uncertainty in the data. The IATTC noted that indirect effects (such as cow-calf separation, elevated stress hormones and enzymes, and heart damage) are speculative, given the absence of adequate data. The MMC provided no additional studies, but agreed that, “\* \* \* existing information does not provide a sufficient basis for quantifying any increased levels of mortality that occur during chase operations, reproductive failure resulting from stress, facilitated predation, post-release capture myopathy, or disruption of the tuna-dolphin bond.”

In sum the available information on indirect effects, including much of the information regarding cow-calf separation, is limited, and therefore bars population-level inferences of the effects of stress on dolphin stocks. Additional research is necessary to better understand these more complex effects on dolphin stocks. Accordingly, the best available information, including data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, the Expert Panel opinions, and other relevant information, indicates that indirect effects caused by purse-seine fishing are not impacting dolphins to a degree that would risk or appreciably delay recovery to optimum population levels.

*The Growth Rate Question.* For each depleted dolphin stock, is the observed population growth rate sufficient to ensure that each stock's recovery to OSP is not appreciably delayed?

To answer this question, NOAA Fisheries fit a population model to a time series of research vessel abundance estimates, using the time series of estimates of the incidental mortality from tuna vessel observer data (TVOD) collected by IATTC and national program observers, as well as TVOD as indices of abundance in a subset of the analyses. NOAA Fisheries also estimated growth rates for each dolphin stock and measures of uncertainty for each estimate. Finally, assessments from the members of the Ecosystem Panel were used when considering the estimated growth rates.

The assessment modeling produced additional information on the current depletion levels of two of the three depleted dolphin stocks. Depleted means that a marine mammal population's abundance is less than 60% of its carrying capacity or the maximum size of a particular population that can be sustained within a given area or habitat. Northeastern offshore spotted dolphins are at 20% and eastern spinner dolphins at 35% of their pre-fishery population levels and thus remain depleted under the MMPA. Similar estimates for coastal spotted dolphins are unavailable, due to a lack of data on fishery-related mortality and time-series abundance estimates from the early years of the fishery.

NOAA Fisheries estimated a “one-slope” and “two-slope” model of growth rates for dolphin populations. While the one-slope model assumes a constant growth over the period studied, the two-slope model allows for a change in the growth rate. The one-slope model indicates that the dolphin stocks are growing at low rates (1–2%) although there is a 95% confidence that they are not declining. The two-slope model results indicate that the growth rate decreased, but was still positive, for one stock but became negative for a second stock during this past decade. The two models produce roughly equally probable results.

Another important consideration in assessing the impact of the fishery on depleted stocks is to determine the time to recovery for these stocks under current conditions. Using the growth rates mentioned above in a population model, estimated times to recovery were determined for these two stocks. When abundances of the depleted stocks are projected into the future, the one-slope model predicts recovery in 78 years for northeastern offshore spotted dolphins, and in 65 years for eastern spinner dolphins. The two-slope model, having roughly equivalent support by the data, predicts that neither stock would recover in at least 200 years. This two-

slope model shows that the northeastern offshore spotted dolphin abundance would stay constant, while eastern spinner abundance would decline, assuming that there have been no change in carrying capacity since the late 1950s.

[FR Doc. 03-798 Filed 1-14-03; 8:45 am]

BILLING CODE 3510-22-P

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### Notice, Roundtable on Convergence of Communications Technologies, "Voice over Internet Protocol (VoIP)"

**AGENCY:** National Telecommunications and Information Administration, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) will host an afternoon roundtable discussion on Voice over Internet Protocol (VoIP). The roundtable will address the technical and functional aspects of VoIP, the state of the VoIP marketplace, and the policy and regulatory issues that may arise with use of such convergence technology.

**DATES:** The roundtable will be held 1 p.m. to 5 p.m., Wednesday, February 12, 2003.

**ADDRESSES:** The roundtable will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC in Room 4830. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania avenues.) This roundtable is open to the public. To facilitate entry into the Department of Commerce, please have a photo identification and/or U.S. Government building pass, if applicable.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Guy, Office of the Assistant Secretary for Communications and Information, at (202) 482-1840, or electronic mail: [jguy@ntia.doc.gov](mailto:jguy@ntia.doc.gov). Media inquiries should be directed to the Office of Public Affairs, NTIA, at (202) 482-7002.

#### SUPPLEMENTARY INFORMATION:

Advancements in the development of Internet Protocol (IP) technologies are expanding the viability of IP-based networks to support additional features, including the transmission of voice, commonly referred to as VoIP. While traditional telephone service uses circuit-switched technology to establish

a dedicated line between communicating parties, VoIP applications use packet-switched technology that divides the voice transmission into packets of data and sends them over the fastest available route. VoIP systems may use bandwidth more efficiently and may represent cost savings for providers and subscribers by using a single network for both voice and data. VoIP has been developing over the last decade, with a number of companies already deploying the service or announcing introduction in the near future.

NTIA's roundtable will address the issues necessary to understand VoIP, how it works, the marketplace trends, and the impacts VoIP may have on communications and information policies and regulations. As the principal adviser to the President on communications and information policies, NTIA is vested with "[t]he authority to conduct studies and make recommendations concerning the impact of the convergence of computer and communications technology." 47 U.S.C. § 902(M). The roundtable dialogue will help the Administration to better understand the technology, its relation to the telecommunications market, especially to broadband, and prepare for participation in other venues, including the International Telecommunications Union (ITU).

The roundtable will be divided into three sessions. First, NTIA will present a brief overview of VoIP, featuring a demonstration of VoIP technology using the Commerce Department's newly-installed VoIP telephone system. Two panel discussions will follow: the first panel will focus on the VoIP marketplace, and the second panel will address policy considerations for VoIP. Each of these sessions will also include a brief audience question and answer session.

The roundtable will be webcast. A final, updated copy of the agenda, including a link for the webcast will be available on NTIA's web page at [www.ntia.doc.gov](http://www.ntia.doc.gov).

#### Public Participation

This meeting will be open to the public. Seating for public attendees is limited and is available on a first-come, first served basis. The roundtable will be physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Jennifer Guy (see contact information above) at least three (3) days prior to the meeting.

Dated: January 9, 2003.

**Kathy D. Smith,**

*Chief Counsel, National Telecommunications and Information Administration.*

[FR Doc. 03-801 Filed 1-14-03; 8:45 am]

BILLING CODE 3510-60-M

## DEPARTMENT OF COMMERCE

### Patent and Trademark Office

#### Public Key Infrastructure (PKI) Certificate Action Form

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before March 17, 2003.

**ADDRESSES:** Direct all written comments to Susan K. Brown, Records Officer, Office of Data Architecture and Services, Data Administration Division, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231; by telephone at (703) 308-7400; or by electronic mail at [susan.brown@uspto.gov](mailto:susan.brown@uspto.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Fred Whiteside, Information Technology Security Program Office, USPTO, Washington, DC 20231; by telephone at (703) 308-6973; or by electronic mail at [frederick.whiteside@uspto.gov](mailto:frederick.whiteside@uspto.gov).

#### SUPPLEMENTARY INFORMATION

##### I. Abstract

The Government Paperwork Elimination Act (GPEA) directs federal agencies to implement electronic commerce systems that will enable the collection and dissemination of information while also ensuring the security and validity of information that is transmitted electronically. In support of the GPEA and its own electronic filing initiatives, the United States Patent and Trademark Office (USPTO) has implemented Public Key Infrastructure (PKI) technology to support electronic commerce between the USPTO and its customers. PKI is a set of hardware, software, policies and procedures used to provide several important security services for the electronic business activities of the USPTO. Using PKI ensures the