

accuracy and use requirements as they relate to vehicle tare weights stored in computer memory.

To examine weights and measures laws which require commercial transactions to be computed on the basis of net weight. There are numerous weighing applications (e.g., solid waste disposal and landfills, quarries, mining, agriculture, household moving and others) where net weights of commodities and/or service charges are determined using vehicle scales. Most commercial vehicle scales are required to be accurate to approximately  $\pm 0.2$  percent (e.g.,  $\pm 160$  lbs at 80,000 lb), however, stored tare weights have been found to have errors of several thousand pounds. This forum will discuss the issues and alternatives that should be considered in an effort to balance buyer and seller interests in the accuracy of these transactions.

To provide an opportunity for industry representatives, consumers, scale-owners-users, exporters, importers, retailers, Federal and State agencies, and other interested parties to understand how state and local weights and measures officials supervise the weighing of trucks and other vehicles to ensure accuracy and equity in the marketplace.

To pursue partners to work with NIST, along with state and local weights and measures officials, in a national working group to identify industry and regulatory concerns (e.g., economic impact of incorrect weights versus the cost, in terms of time and money to weigh vehicles for both gross and tare weight).

Another purpose is to solicit industry cooperation in reducing weighing inaccuracies through the identification and use of good weighing practices.

#### *Participation—Advance Registration Required*

The forum is free and open to the public, but space is limited. Advance registration is required for Department of Commerce security purposes and to ensure that all participants receive a name badge (required to obtain access to the building) and handout materials. The deadline for registration is 5 p.m. EDT on September 21, 2004.

Dated: August 31, 2004.

**Hratch G. Semerjian,**

*Acting Director.*

[FR Doc. 04-20341 Filed 9-7-04; 8:45 am]

BILLING CODE 3510-13-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 051404A]

#### 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). The 2003 final SARs are now complete and available to the public.

**ADDRESSES:** Send requests for printed copies of reports 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 (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115 0070, email [Robyn.Angliss@noaa.gov](mailto:Robyn.Angliss@noaa.gov). Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543, email [Gordon.Waring@noaa.gov](mailto:Gordon.Waring@noaa.gov) or Lance Garrison, Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149, e-mail [Lance.Garrison@noaa.gov](mailto:Lance.Garrison@noaa.gov). Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802 4213, e-mail [Cathy.E.Campbell@noaa.gov](mailto:Cathy.E.Campbell@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Tom Eagle, Office of Protected Resources, 301 713 2322, e-mail [Tom.Eagle@noaa.gov](mailto:Tom.Eagle@noaa.gov); Robyn Angliss 206-526-4032, regarding Alaska regional stock assessments; Gordon Waring, 508-495-2311, regarding Northwest Atlantic regional stock assessments; Lance Garrison, 305-361-4488, regarding Mid-Atlantic and Gulf of Mexico regional stock assessments; or Cathy Campbell, 562-980-4020, regarding Pacific regional stock assessments.

#### SUPPLEMENTARY INFORMATION:

#### Electronic Access

All stock assessment reports and the guidelines for preparing them are available via the Internet at [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html).

#### 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 that occurs in waters under the jurisdiction of the United States. These reports must, among other things, 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 nonstrategic 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.

Draft 2003 SARs were made available for a 90 day public review and comment period on August 27, 2003 (68 FR 51561). Prior to their release for public review and comment, NMFS subjected the draft reports to internal technical review and to scientific review by regional Scientific Review Groups (SRGs) established under the MMPA. Following the close of the comment period, NMFS revised the reports as needed to prepare final 2003 SARs. Printed copies may be obtained by request (see ADDRESSES), and electronic copies are available on the Internet (see Electronic Access).

The most recent versions of the SARs for polar bears, sea otters, walrus, and manatees, prepared by FWS, are appended to NMFS' final 2003 SARs. These reports were included so that interested constituents would have reports for all regional stocks in a single document.

#### Comments and Responses

NMFS received three letters with comments on the draft 2003 SARs. The comments and responses below are separated according to the regional scope of the comments. Many of the comments on specific SARs addressed minor editorial points for clarification.

Most of these comments were included into the final reports or will be included in future reports and are not included in the following segment of this document.

#### *Comments on National Issues*

*Comment 1:* Draft 2003 SARs are being commented on by the public while regional scientific review groups are reviewing draft 2004 SARs. Thus, the public may be commenting on reports that are soon to be out of date. For example, information on the continued decline of Cook Inlet belugas after reduction in subsistence harvests and the recent decline in gray whale abundance are not covered in the 2003 reports. NMFS should work with the scientific review groups from each region and the MMC to investigate means to update the data in the stock assessment reports in a more timely fashion and to better coordinate the review process for the reports.

*Response:* The current process for preparing, reviewing, and adjusting SARs was developed in conjunction with the regional SRGs. Resources and competing priorities have resulted in the process being delayed after the initial SRG reviews, and NMFS is working to get the process back on schedule. The 2004 draft SARs are already late; therefore, the opportunity for returning to the schedule will be for the 2005 revisions to the SARs. NMFS would consider alternatives submitted by the public or other agencies to update the reports in a more timely and coordinated manner.

*Comment 2:* Information on fisheries interactions needs to be presented in a more systematic and consistent approach. Some basic information should be reported clearly in all SARs and should include answers to questions such as: (1) which fisheries might interact with the stock; (2) which of those fisheries are monitored for interactions; (3) how effective are the monitoring efforts; and (4) how many individuals from the stock are killed or seriously injured.

*Response:* Each SAR contains a discussion of fishery-related mortality, which includes fishery-specific information on data sources and mortality estimates. The SARs do not contain a list of fisheries that may interact with stocks of marine mammals nor an analysis of the effectiveness of monitoring efforts. The latter is usually apparent from levels of observer coverage and frequency of mortality in the fishery, which is included in each SAR for the marine mammal stocks that experience incidental mortality in commercial fisheries. Expanding the SARs to all information on each stock

would be inconsistent with their purpose, a summary of the status of each stock of marine mammals and of factors that may affect the status.

*Comment 3:* Reports from the different regions are not consistent with regard to use of and/or reporting of observer coverage; thus, monitoring standards are needed to assist with understanding mortality and serious injury estimates and to distinguish those cases where estimates are actually low compared to those cases where they may appear low due to inadequate observer coverage.

*Response:* NMFS is producing a document to identify resource requirements for adequate protected species stock assessment, and the document will describe desired levels of data quality, quantity, and timeliness. These levels will represent goals to which NMFS would like to achieve; achievement of the goals will require additional resources to support stock assessment activities. The requested information is available from NMFS' fishery science centers, and its inclusion within SARs would expand the reports beyond the scope of information required by the MMPA (see also response to comment 2).

*Comment 4:* A number of reports assumed that the absence of evidence for mortality and serious injury reasonably could be construed as evidence that mortality and serious injury did not occur, even without effective monitoring. In addition, NMFS needs to review and revise its approach for determining when right whales have been seriously injured. The requirement that mortality of an injured animal be confirmed before it can be considered a "serious injury" clearly biases estimates of "mortality and serious injury" downward, and underestimates the need to address the source of the injury.

*Response:* When there is a lack of direct information upon which to base serious injury and mortality estimates, the SAR contains no reported serious injury or mortality. In those cases where indirect evidence (e.g., seasonal distribution of the affected marine mammals and fisheries) or anecdotal information suggests the lack of reported mortality may reflect exceedingly low mortality levels, the SAR assumes the absence of reported mortality accurately reflects the situation.

Mortality and serious injury estimates for North Atlantic right whales are likely biased downward because only observation or recovery of dead or seriously injured animals is included in the reports. Thus, any unobserved mortality or serious injury is not

included in the reports. NMFS will continue to examine each injured North Atlantic right whale on a case-by-case basis in consultation with other North Atlantic right whale experts in classifying injuries as serious or non-serious. However, the details of these analyses will not be included in the SARs to ensure reports remain as they were designed, summaries of the status of the stocks.

*Comment 5:* NMFS should review its interpretation of population parameters and status in the absence of adequate information, identify measures that can be used to convey the associated uncertainty, and incorporate those measures in the stock assessment reports.

*Response:* The SARs contain brief descriptions of the evidence used to support estimates and report coefficients of variation on estimates when these are available. When default parameters are used in PBR calculations due to lack of stock-specific estimates, the defaults are identified. The bibliography of each report directs interested readers to source documents containing the details of the information upon which the SARs are based.

*Comment 6:* Prepare SARs on prospective stocks, or at least incorporate information on the applicable parameters (e.g. minimum population estimate, potential biological removal level, mortality estimate, and status) in the current SAR. For example, the available information on harbor seals in Alaska has not been updated while stock structure is being determined. Sufficient information is available to identify prospective stocks and report their potential biological removal levels and associated parameters.

*Response:* In a meeting in September 2003 to discuss guidelines for preparing stock assessment reports, NMFS scientists and managers and representatives of the regional SRGs and the Marine Mammal Commission recommended identifying prospective stocks in SARs and showing applicable information on each prospective stock. Prospective stocks would be a transition to new stock identification, including reports on the new stocks, for the affected marine mammals. The recommendation has not been presented to NMFS senior managers for approval, and, if the recommendation is approved, it would be incorporated in future SARs.

*Comment 7:* Use the SARs as a basis for an overall assessment of key issues/problems, and use that assessment to facilitate planning and setting of priorities for future research. NMFS

should consider adding an appendix to these reports to list and prioritize research needs and conservation issues.

*Response:* The purpose of the SARs is to summarize the status of stocks of marine mammals. The requested information is included in conservation and recovery plans prepared for depleted, threatened and endangered stocks of marine mammals and is used to prioritize NMFS activities in the conservation of marine mammals.

#### *Atlantic Regional SARs*

*Comment 8:* The description of the geographic range of long-finned (*Globicephala melas*) and short-finned (*G. macrorhynchus*) pilot whales is confusing. The third paragraph in the "Fishery Information" section that explains the overlap of the ranges of the two species has been deleted; however, this explanation was more clear than the current explanation.

*Response:* NMFS has re-instated the former paragraph.

*Comment 9:* Unless *G. melas* and *G. macrorhynchus* are equivalent in every way (e.g., abundance, age structure, life history characteristics, interactions with fisheries), combining them for the purposes of abundance estimation is not only inconsistent with a precautionary approach, but actually may expose one species to levels of risk greater than is allowed for under the PBR-based management approach. In addition, the most recent abundance estimate for long-finned pilot whales is five years old and, given that this is a strategic stock, abundance surveys on a more frequent basis seem necessary.

*Response:* Although combined information for these species has its limitations, presenting the information at hand is better than presenting no information. The situation with pilot whales is similar to beaked whales, where species cannot be identified during surveys. NMFS understands the limitations of the grouped estimates and uses this information accordingly in its conservation programs and decision-making. To alleviate this problem, NMFS will be conducting a pelagic cetacean abundance survey, including dedicated biopsy sampling in the region of overlap of these two species. Also, NMFS has made it a high priority to collect tissue samples from pilot whales taken incidental to fishing operations to further assist in delineating stock boundaries.

*Comment 10:* For long-finned pilot whales (*G. melas*), the report notes mortality and serious injury has been close to PBR for the last few years and its status has fluctuated. It should be clarified that it is not possible to

determine whether mortality and serious injury have fluctuated or the estimates have fluctuated due to lack of precision in observer data.

*Response:* The text has been revised to clarify the meaning.

*Comment 11:* Observer coverage for long-finned pilot whales is inadequate for two of the four fisheries that affect this species; thus, even relatively large bycatch rates may go undetected. Either observer coverage should be increased in the pelagic longline and midwater trawl fisheries or alternative methods must be developed to assess incidental mortality.

*Response:* NMFS has recently completed an analysis on the level of sampling required to achieve reasonable precision on estimates of mortality for long-finned pilot whales taken incidental to the *Illex* and *Loligo* squid fisheries prosecuted by trawls in the Mid-Atlantic region. NMFS plans to implement increased sampling coverage levels for these fisheries in 2004, contingent on funding, and plans to research alternative analytical methods to reduce bias in estimated mortality rates.

*Comment 12:* Increased observer coverage is necessary to better characterize fishery interactions with common dolphins (Western North Atlantic stock). The extremely high coefficients of variation of mortality estimates for the Northeast multi-species gillnet fishery results in these estimates being highly sensitive to the observed bycatch of small numbers of dolphins (e.g., bycatch of 2 animals increases the mortality estimate from 0 to 146 animals).

*Response:* Common dolphin mortality in the Northeast multi-species gillnet fishery can be characterized generally as a rare occurrence. Rarely-observed mortality is reflected in the coefficients of variation associated with the mortality estimates. Increased sampling levels in addition to improved analytical procedures for this species would improve precision for common dolphin mortality estimates. Increased sampling, however, is contingent on increased resources for observer coverage.

*Comment 13:* Recent genetic evidence has shown that harbor porpoises that stranded in the mid-Atlantic region are not exclusively from the Gulf of Maine/Bay of Fundy stock, but also from the Gulf of St. Lawrence and Newfoundland stocks. These latter stocks are not assessed by NMFS, but they occur in U.S. waters and are vulnerable to mortality in U.S. fisheries.

*Response:* NMFS does not have the resources to assess the northern

Canadian stocks of harbor porpoises. Canada has recently conducted abundance surveys in the Gulf of St. Lawrence and around Newfoundland, and more surveys are planned for the near future. When results from the Canadian surveys and more genetic work from the mid-Atlantic states are available, it would be possible to include assessments on these populations as well. Additional assessment for these populations as well as for many other stocks of marine mammals in waters under US jurisdiction would facilitate improved management decisions. Additional abundance surveys, like additional observer coverage, are limited by available resources to support them.

*Comment 14:* The SAR states that the population estimate in 1998 for North Atlantic right whales may have been biased in a downward direction if animals were not photographed and identified or if some living animals were presumed dead. However, this estimate might be biased upwards if animals died, but were not confirmed, in the 5-year period prior to 1998 and, hence, were assumed alive based on past sightings.

*Response:* The statistical model used in estimating North Atlantic right whale abundance in 1998 incorporated only animals known to have been alive (i.e., seen alive) in 1998 and future years; therefore, an over-estimate is unlikely.

*Comment 15:* There is insufficient information in the SAR on North Atlantic right whales to allow the reader to determine if NMFS made an accurate assessment of serious injury and mortality. This comment specifically refers to two cases of entangled whales (2427 and 3107) and the "gruesome" appearance of injuries to two other whales.

*Response:* In the case of right whale 2427, the entanglement was not considered a serious injury. The event involving whale 3107 happened after the period addressed by the 2003 SAR and will be included in future SARs as an entanglement mortality.

For the two whales with gruesome-appearing injuries, the injuries were deemed not likely to be fatal. Detailed assessments of an injured right whale's condition are recorded by NMFS while in the field and are reviewed by scientists or other people with certain expertise in the biology of right whales. When injured animals are re-sighted, the determination of serious injury and mortality is reassessed based upon the new information. Hence, the determination of serious injury and mortality represents the best scientific information available. As noted in

responses to other comments, the SARs are not designed to present the details of each analysis. Rather, the SARs present summaries of information available in more detail elsewhere (e.g., in documents listed in the reference section of each report).

*Comment 16:* The report on sei whales (Nova Scotia stock) states, "...there have been no reported entanglements or other interactions between sei whales and commercial fishing activities..." but it is not clear if the lack of reported mortality reflects low interaction rates or inadequate monitoring.

*Response:* The text has been changed to clarify the meaning.

*Comment 17:* Evidence from two stranded rough-toothed dolphins (Northern Gulf of Mexico stock) indicates fisheries-related mortalities occur; however, there is not sufficient information to attribute these mortalities to a specific fishery. The pelagic longline fishery is the only fishery discussed, but it is unclear if this is the only fishery operating in the Gulf of Mexico that may interact with rough-toothed dolphins.

*Response:* The text has been modified. The pelagic longline fishery is not the only fishery operating in the Gulf of Mexico, but it is the only one with any appreciable observer coverage and the only one for which marine mammal interactions have been documented. The lack of information concerning rough-toothed dolphin interactions with other fisheries precludes their mention in the 2003 SAR; however, NMFS recognizes the review of fisheries in the Gulf of Mexico is incomplete and plans to address this issue in future SARs.

#### *Pacific Regional SARs*

*Comment 18:* The SAR for harbor seals (California stock) indicates a "small number" of seals occurs along the west coast of Baja California, but these animals are not included in the assessment because the U.S. and Mexico do not have a formal agreement for management. It is unclear what constitutes a "small number", and why a formal agreement is needed to include these animals in the stock assessment.

*Response:* Harbor seals along Baja California are not considered to be a part of the California stock because it is not known if there is any demographically significant movement of harbor seals between California and Mexico. Although harbor seals occur along the west coast of Baja California, at least as far south as Isla Asuncion, which is about 100 miles south of Punta Eugenia, numbers are not available. In this context, "small number" means the

actual abundance is unknown; however, it is expected to be small compared to the abundance on US haul-outs. A formal agreement would ensure mortality estimates are available and ensure management efforts are consistent with the MMPA.

*Comment 19:* Stranding data on harbor seal (California stock) deaths and injuries are attributed to hook-and-line as well as gillnet fisheries, but the text does not indicate which fisheries operate in the same times and areas as the strandings. This information would be useful in determining if observer coverage was adequately capturing mortality of harbor seals.

*Response:* The SAR has been revised to clarify this information.

*Comment 20:* The "Subsistence Harvests" section for harbor seals (Washington Inland Waters stock) states that few seals are taken in subsistence hunts because the tribes utilize seals taken as bycatch in fishing operations; yet, it is not clear whether this incidental catch is included in the mortality estimates. If the seals utilized by the Pacific Northwest treaty Indian tribes are from the set gillnet fisheries, a simple reference in this section would be sufficient.

*Response:* The text has been modified to identify likely fisheries.

*Comment 21:* The SARs for the northern right whale dolphin, striped dolphin (CA/OR/WA stock) and Risso's dolphin (CA/OR/WA stock) state that surveys were conducted in 1991, 1992, 1998, and 2003; however, trends in abundance were not estimated. It is unclear why no conclusion was made. The SAR should state if different methods were used and if comparisons cannot be made.

*Response:* The relative imprecision of abundance estimates for these stocks (coefficients of variation are typically  $\leq 0.40$  for individual surveys) renders any trend analysis equivocal. Text has been added to these stock assessments comparing estimates of abundance over time, with the general statement indicating no evidence of a trend in abundance for any of these stocks.

*Comment 22:* The SAR for Southern Resident killer whales does not reflect NMFS' determination (68 FR 31980; May 29, 2003) that the Southern Residents comprise a "depleted stock" under the MMPA.

*Response:* The final SAR includes the depleted status. The depleted status was not final until after the draft SAR was prepared.

*Comment 23:* PBR for Southern Resident killer whales should be set at zero, not 0.8 whales per year.

*Response:* The formula for calculating PBR is specified in the MMPA, and the parameters used in the PBR calculation for this stock are consistent with NMFS guidelines for preparing marine mammal stock assessment reports.

*Comment 24:* The minimum population estimate (Nmin) for Southern Resident killer whales is an overestimate because L98 is isolated from other members of the stock.

*Response:* NMFS considers L98 a part of the population at this time. Although the whale is separated from other members of the stock, it is a sub-adult and would not interbreed with other Southern Residents even if it were now associated with the group. If L98 survives to adulthood and remains separate from the stock, NMFS would re-consider his status in the population.

*Comment 25:* NMFS improperly relies on maximum net productivity (Rmax) estimates for Southern Resident killer whales when observed data for other killer whales are available and may be used to calculate a stock-specific Rmax.

*Response:* The default (theoretical) Rmax value used in the PBR estimate for this stock is consistent with NMFS guidelines for preparing SARs. The data from the Northern Resident stock does not necessarily reflect Rmax for Southern Resident stock because the Northern Resident stock was large when the growth rate was estimated. The MMPA defines Rmax as the maximum per capita growth rate when the population is at a small size.

*Comment 26:* NMFS is using the wrong value for the recovery factor of Southern Resident killer whales.

*Response:* The recovery factor of 0.5 is consistent with NMFS guidelines for preparing marine mammal stock assessment reports, which provide the use of 0.5 as the default recovery factor for threatened or depleted stocks or stocks of unknown status. NMFS will review this SAR annually in consultation with the Pacific SRG and will revise the recovery factor and other parameters used in the PBR calculation when information suggests a revision is warranted.

#### *Alaska Regional SARs*

*Comment 27:* The third paragraph under "Fisheries Information" of the Steller sea lion (Western stock) SAR indicates that precise figures for observer coverage will be available when the contract report is provided to NMFS in 2001. This statement is out-of-date, as it is nearly 2004. The same paragraph includes an incorrect reference to table 2b.

*Response:* The statement has been revised, indicating precise estimates of

effort will be made available when the report is provided. The reference to table 2b should have been to table 2a and will be corrected in future reports.

*Comment 28:* It is not clear whether the fisheries information provided for the western population of Steller sea lions includes any interactions with fisheries for herring. It would be helpful if such information (e.g., target species) were included in either the body of the report or in Appendix 5.

*Response:* The SARs report interactions between marine mammals and commercial fishing only when these interactions result in mortality and serious injury of marine mammals. NMFS has no information indicating incidental mortality and serious injury of Steller sea lions occurs in herring fisheries. The marine mammal stocks potentially interacting with specific fisheries are listed in the annual list of fisheries prepared and published in accordance with the MMPA.

*Comment 29:* In the SAR for Northern fur seals (Eastern Pacific stock), the first sentence under "Current and Maximum Net Productivity Rates" seems misleading in that the population increased steadily until the 1940s and perhaps even the early 1950s. In addition, the harvest was discontinued from 1912–1917, resumed and focused on juvenile males from 1918 to the mid to late 1950s, and focused on adult females after that in an effort to reduce population size and interactions with Japanese fisheries.

*Response:* NMFS will propose alternate wording in future draft SARs.

*Comment 30:* The "Fisheries Information" section of the Northern fur seal (Eastern Pacific stock) SAR states, "No observers have been assigned to several of the gillnet fisheries that are known to interact with this stock, making the estimated mortality unreliable." This statement may underestimate the number of fisheries involved, and a more descriptive statement of the fisheries that might interact with Northern fur seals would be useful.

*Response:* Information on which fisheries have reported mortality and serious injuries of marine mammals is included in Appendices 4 and 5 of the SARs and is, thus, readily available. These appendices identify which fisheries have been observed.

*Comment 31:* The "Habitat Concerns" section fails to mention the Eastern Pacific stock of Northern fur seals may interact indirectly or ecologically (i.e., may compete) with the Alaska groundfish fisheries. Recently collected information indicates that northern fur seal foraging patterns overlap with

fishing distributions, and fishing remains a reasonable hypothesis to explain, at least partially, the decline of the stock from the 1970s to the present.

*Response:* NMFS will propose alternative wording in future draft SARs.

*Comment 32:* The SARs for harbor seals in southeast Alaska, Gulf of Alaska, and Bering Sea are out-dated and await revision pending determination of harbor seal stock structure in Alaska. The evidence indicating finer stock structure is substantial, and assessments for the prospective stocks would be useful to identify conservation issues of concern.

*Response:* The available scientific information suggests fine structure in stocks of harbor seals. The process for making the stock identification includes working with the Alaska Native Harbor Seal Commission pursuant to an agreement under MMPA section 119 and is underway. The harbor seal reports will be revised according to the stock structure identified in this process.

*Comment 33:* The SARs for the Alaska stocks of spotted seals, bearded seals, ribbon seals and ringed seals present information that seems biased and non-precautionary. Abundance trends are not known, and each may be subject to multiple factors that could affect their abundance, including subsistence harvests and changes in climate and ice conditions. Statements such as "there is no reason to believe there are less than 50,000 spotted seals in U.S. waters," and "reliable data on trends in population abundance are unavailable, though there is no evidence that population levels are declining" imply an absence of evidence is best interpreted as evidence of no problems.

*Response:* The SARs for spotted, bearded, ribbon, and ringed seals have been revised twice in recent years. The reports indicate abundance estimates and trends are unknown and state the impacts of climate change on these sensitive species is unknown. In a few places, the SARs include statements from previous versions postulating lower limits for abundance or making unsupported statements about trends. These statements will be supported by additional information or analysis or removed when the reports are updated in 2005.

*Comment 34:* The SAR for beluga whales (Beaufort Sea stock) states the stock is stable or increasing. A description of the trend and a basis for the statement are needed. The conclusion that "there is no evidence that the eastern Chukchi Sea stock of beluga whales is declining" is based on

a number of assumptions that should be described and justified. The count data presented are from a limited portion of the geographic range of the stock, and it is not clear that the counts in this region are indicative of trends for the overall population. The Subsistence/Native Harvest section of the beluga whale (Bristol Bay stock) states that "there were 7 reported mortalities of beluga in subsistence salmon gillnet fisheries in 2000. If this level of mortality is averaged over 5 years, an average of 1.4 beluga per year would be caught in subsistence gillnet fisheries in this area". It is not clear why the number from a single year would be averaged over 5 years, unless there were no mortalities in those other years, in which case the report should state there were no mortalities for those other years.

*Response:* At the time the report was last reviewed and revised, the SAR authors were had received additional reports of mortalities in the subsistence gillnet fishery other than the 7 incidental mortalities that occurred in 2007. If the reporting of 7 incidental mortalities in 2000 and none in other years accurately reflects true mortality, then averaging the total over the five years is appropriate. Because the subsistence gillnet fishery is conducted by Alaska Natives beluga whales taken incidental to this fishery are often used for subsistence purposes. Thus, care will have to be taken to ensure that incidental mortalities in the subsistence gillnet fishery are not double-counted as both "subsistence harvest" and "mortalities that occur incidental to the subsistence gillnet fishery". Uncertainty about the level of incidental mortality in the subsistence gillnet fishery is reflected in the SAR; therefore, this point, like the others noted in the comment, will be considered when the beluga SARs (other than for the Cook Inlet stock) are scheduled for revision in 2005.

*Comment 35:* The Population Size section of the Cook Inlet beluga whale SAR states, "Although the 2001 estimate of abundance is slightly lower than the estimate for 2000, the difference is not significant and is not believed to represent a decline in the population." This statement should be updated to indicate the trend is still not clear and to explain who believes, and for what reason, the difference does not represent a decline.

*Response:* The statement has been deleted from the SAR because the trend is not clear.

*Comment 36:* Under the section Habitat Concerns of the Cook Inlet beluga SAR, the statement "The best

available information indicated that these activities, alone or cumulatively, have not caused the stock to be in danger of extinction" should be corrected. The best available science is unable to describe or explain the current population trend or to describe the importance of all factors that may be affecting the stock. Further, NMFS should specifically list ongoing and proposed developments of concern and describe what is being done to provide protection for belugas.

*Response:* The wording of the draft SAR was based upon the 12-month finding on a petition to list this stock of whales under the Endangered Species Act (65 FR 38778, June 22, 2000), and abundance estimates for the stock do not show a significant trend since 1998; therefore, factors related to habitat or other human activities may be impeding recovery. NMFS will consider revisions related to such factors and consult with the Alaska SRG when revising the SAR in the future.

*Comment 37:* Because results of surveys since 1999 show no sign of population recovery, the rationale for the choice of a recovery factor for Cook Inlet beluga whales is questionable and should be corrected. Similarly, the statement "once the subsistence harvest ceased, the decline in the stock ceased" is misleading and should be deleted or changed.

*Response:* Other than the minimal level of subsistence harvest of one or two whales per year, no other sources of human-caused mortality have been identified. Such a low level of human-caused mortality is not expected to delay recovery significantly. Although the abundance estimates for Cook Inlet belugas remain near the 1999 levels, the precipitous decline of the previous 5 years is no longer apparent. Thus, suggesting the decline has ceased is reasonable. The rationale explaining the recovery factor notes concern for the population because it was reduced to low levels, states that the lower recovery factor recommended by the SRG was used for those stocks listed as endangered (and Cook Inlet beluga are not listed as endangered), and states the stock is designated as depleted (and 0.5 is the default recovery factor for depleted stocks). The current recovery factor (0.3) is midway between the default for depleted and endangered stocks; thus, it reflects the increased concern for the stock compared with other depleted stocks.

*Comment 38:* The Current and Maximum Net Productivity Rates section in the SAR for killer whales (Eastern North Pacific Northern Resident stock) states that "a population

typically increases at the maximum growth rate ( $R_{max}$ ) only when the population is at extremely low levels; thus, the estimate of 2.92 percent is not a reliable estimate of  $R_{max}$ ". This statement is debatable because, under density-dependence theory, populations may increase at their maximum rate even when population size is beyond extremely low levels.

*Response:* The Northern Resident killer whale SAR is scheduled for review in 2005, and the comment will be considered at that time. The comment is true for some population models; however, the statement in the SAR is accurate under the logistic model, the underlying theory supporting the PBR approach.

*Comment 39:* The estimate of  $N_{min}$  is outdated for the North Pacific stock of Pacific white-sided dolphins.

*Response:* The estimate is older than NMFS' guidelines indicate for reliable use, and no new data are expected in the near future. Therefore, NMFS has revised the PBR for this stock to be "undefined".

*Comment 40:* The first data row of Table 21 under Fisheries Information for Gulf of Alaska harbor porpoises is incomplete and unclear.

*Response:* The table has been clarified to indicate no harbor porpoise were observed killed or seriously injured in fisheries with observer programs.

*Comment 41:* More up-to-date information on population size of Eastern North Pacific gray whales has been available for several years and should be included in the report.

*Response:* NMFS intends to include updated information when the SAR for this stock is next revised.

*Comment 42:* Both population size and minimum population estimates for Central North Pacific humpback whales are based on outdated information.

*Response:* The SAR for this stock contains the most current information available on the stock's abundance. A major research effort directed at North Pacific humpback whales is in progress, and results from this research will be incorporated into the SAR when the information is compiled, subjected to review, and made available.

*Comment 43:* The information on Central North Pacific humpback whales for current population trends and current and maximum net productivity rates is inconsistent. The section on current population trend suggests the available information is not sufficient to estimate a trend, even for whales in southeast Alaska, whereas information in the section on current and maximum net productivity rates suggests it is sufficient. In addition, based on caveats

expressed in the trend section, the data used to estimate maximum net productivity should be examined closely as it is higher than expected. Also, the section on Status of Stock for Central North Pacific humpback whales is confusing. It is not clear estimated mortality and serious injury rates for the entire stock and for southeast Alaska are below respective PBRs. Furthermore, it states the rate of increase for whales in southeast Alaska may have recently declined, suggesting that this portion of the stock may be approaching carrying capacity without providing any basis for this statement, and then reports that trends cannot be estimated.

*Response:* NMFS will review this SAR in consultation with the Alaska SRG and will revise in a future draft as needed.

*Comment 44:* The use of a 3-year mean to estimate the population size of the Eastern Pacific stock of northern fur seals creates an upward bias in the annual population estimate. There has been a statistically significant declining trend detected in population abundance on both St. Paul and St. George islands since the mid-1990s; thus, a 3-year mean creates an upward bias in the annual population estimate by effectively "shadowing" the real population decline.

*Response:* The 3-year (3-estimate) mean is used to reduce the effect of variation when applying a constant (the expansion factor) to estimate the total population size from pup production estimates. If, for example, the reproductive rates are extremely high or low during a given year, pup production for the year would result in an exceptionally high or low estimate of population size. This variation is a problem inherent to the application of the expansion factor to estimate total population size from a single year. The use of 3-estimate means reduces this annual variation.

The population size listed in the SAR is clearly identified as being calculated from an average of the three most recent pup production estimates. Therefore, the population size, currently calculated as a 3-estimate mean over a 5-year period, represents the most recent estimate for the time period, not for the most recent estimate of pup production. Consequently, the SAR does not overestimate population abundance.

The SAR documents trends based on estimates of pup production rather than population size, and identifies the trends as such. Thus, the trends are not calculated using the 3-estimate means, and do not reduce the estimated downward trend of the population.

*Comment 45:* In the SAR for Eastern Pacific northern fur seals, it is inconsistent with the organization of the assessment to describe the entanglement-related mortality in the "Other Mortality" section, when entanglement is primarily due to fisheries. Also, there is no estimate of entanglement-related mortality reported; however, a conservative estimate of mortality can be obtained by estimating that 50 percent of seals observed entangled, but not captured, die.

*Response:* Northern fur seals, like other marine mammals, may become entangled in derelict fishing gear and other marine debris. The section related to fishery mortality is designed to account for mortality and serious injury incidental to active fishing and is used in conservation programs under MMPA section 118 (such as classifying fisheries). In this regard, NMFS treats such data for northern fur seals in a manner similar to the same data for Hawaiian monk seals, where the debris (including derelict fishing gear) often originates thousands of miles from the Hawaiian Islands. The entanglements are recorded as human-caused mortality and serious injury and are used to evaluate the level of such mortality relative to the stock's PBR.

*Comment 46:* The first sentence in the "Habitat Concerns" section of the SAR for Eastern Pacific northern fur seals reads "Recent rapid development on the Pribilof Islands increases the potential for negatively affecting habitat used by northern fur seals." It is unclear when the "rapid development" occurred on the Pribilof Islands. The word "rapid" should be removed from the first sentence, and a follow-up analysis of the relationship between pup production and distance from development, as well as text describing the accumulation of marine debris, should be included.

*Response:* The text in the section "Habitat Concerns" is a recent addition to the SARs made in response to a public comment and will be reviewed and revised, as necessary, during the next revision of the SAR.

*Comment 47:* It is unclear why Steller sea lion (Western U.S. stock) subsistence harvest data from Lestenkof and Zavadil (2001), Lestenkof *et al.* (2003) and Zavadil *et al.* (2003) were not used in the "Subsistence/Native Harvest Information".

*Response:* The 2003 draft SARs were developed using the best scientific information available at the time. The reports cited were made available to NMFS after the SARs were initially developed. Information contained in

these reports will be reviewed during preparation of future draft SARs.

*Comment 48:* For the Western U.S. stock of Steller sea lions, table 2b in the "Other Mortality" section should be placed under the "Subsistence/Native Harvest Information" section.

*Response:* The table will be moved when the report is next revised.

Dated: August 31, 2004.

**Donna Wieting,**

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

[FR Doc. 04-20343 Filed 9-7-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 090104A]

#### Marine Mammals; File No. 782-1765-00

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Alaska Fisheries Science Center, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE, Seattle, Washington 98115-0070 (Principal Investigator: John L. Bengtson, Ph.D.) has been issued a permit to conduct research on ice seals in Alaska.

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

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)713-0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668; phone (907)586-7221; fax (907)586-7249;

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

**SUPPLEMENTARY INFORMATION:** On July 15, 2004, notice was published in the **Federal Register** (69 FR 42424) that a request for a scientific research permit to conduct research on ringed seals (*Phoca hispida*), ribbon seals (*Phoca fasciata*), and bearded seals (*Erignathus barbatus*) had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations

Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: September 1, 2004.

**Stephen L. Leathery,**

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

[FR Doc. 04-20342 Filed 9-7-04; 8:45 am]

**BILLING CODE 3510-22-S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination Under the African Growth and Opportunity Act

September 1, 2004.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Directive to the Commissioner, Bureau of Customs and Border Protection.

**SUMMARY:** The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Tanzania shall be treated as "handloomed, handmade, or folklore articles" and qualify for preferential treatment under the African Growth and Opportunity Act. Imports of eligible products from Tanzania with an appropriate visa will qualify for duty-free treatment.

**EFFECTIVE DATE:** September 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

#### SUPPLEMENTARY INFORMATION:

**Authority:** The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106-200) (AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including handloomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. In Executive Order 13191, the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles. (66 FR 7272).