

genetic studies; and information on harvest rates on hatchery and wild fish. Data since our last evaluation (2002) is particularly helpful.

In the February 2008 listing determination for Oregon Coast coho (73 FR 7816), we noted that the principal inquiry in determining if this ESU warrants listing is whether present habitat conditions are sufficient to support a viable ESU, particularly during periods of unfavorable marine conditions and low marine survival, and whether future freshwater habitat conditions are expected to degrade. We concluded that the present and future status of freshwater habitat for the Oregon Coast coho ESU was uncertain. Accordingly, we also seek information on spatial or temporal trends in habitat accessibility, quality, and quantity of freshwater (including overwintering and rearing habitats) within the boundaries of the Oregon Coast coho ESU.

#### *Efforts Being Made to Protect Oregon Coast Coho Salmon*

We also encourage all parties to submit information on ongoing efforts to protect and conserve Oregon Coast coho salmon, as well as information on recently implemented or planned activities and their likely impact(s).

#### References

Copies of the petition and related materials are available on the Internet at <http://www.nwr.noaa.gov>, or upon request (see **ADDRESSES** section above).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: April 23, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XL62

#### Marine Mammal Stock Assessment Reports

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

**ACTION:** Notice of availability; response to comments.

**SUMMARY:** As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into

revisions of marine mammal stock assessment reports (SARs). These reports for 2008 are now final and available to the public.

**ADDRESSES:** Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: <http://www.nmfs.noaa.gov/pr/sars/>. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle 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, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115. Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037-1508.

**FOR FURTHER INFORMATION CONTACT:** Tom Eagle, Office of Protected Resources, 301-713-2322, ext. 105, e-mail [Tom.Eagle@noaa.gov](mailto:Tom.Eagle@noaa.gov); Robyn Angliss, Alaska Fisheries Science Center, 206-526-4032, email [Robyn.Angliss@noaa.gov](mailto:Robyn.Angliss@noaa.gov); Gordon Waring, Northeast Fisheries Science Center, email [Gordon.Waring@noaa.gov](mailto:Gordon.Waring@noaa.gov); or Jim Carretta, Southwest Fisheries Science Center, 858-546-7171, email [Jim.Carretta@noaa.gov](mailto:Jim.Carretta@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) required NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal level (PBR), 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 non-strategic stocks. NMFS and FWS are

required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2008, and the revised reports were made available for public review and comment (73 FR 40299, July 14, 2008). The MMPA also specifies that the comment period on draft SARs must be 90 days. NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2008 are available.

#### Comments and Responses

NMFS received letters containing comments on the draft 2008 SARs from two Federal agencies (Marine Mammal Commission and Environmental Quality Division, National Park Service), three non-governmental organizations (Center for Biological Diversity, Australians for Animals International, and Hawaii Longline Association), and two individuals. Most letters contained multiple comments.

Unless otherwise noted, comments suggesting editorial or minor clarifying changes were included in the reports. Such editorial comments and responses to them are not included in the summary of comments and responses below. Other comments recommended development of Take Reduction Plans or to initiate or repeat large data collection efforts, such as abundance surveys, observer programs, or other mortality estimates. Comments on actions not related to the SARs (e.g., convening a Take Reduction Team or listing a marine mammal species under the Endangered Species Act (ESA)) are not included below. Many comments recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in previous years. NMFS' resources for surveys, observer programs, or other mortality estimates are fully utilized, and no new large surveys or other programs may be initiated until additional resources are available or until ongoing monitoring or conservation efforts can be terminated so that the resources supporting them can be redirected. Such comments on the 2008 SARs and responses to them may not be included in the summary below because the responses have not changed.

In some cases, NMFS' responses state that comments would be considered for, or incorporated into, future revisions of the SAR rather than being incorporated

into the final 2008 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR suggests a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting prior to incorporating the change.

#### *Comments on National Issues*

*Comment 1:* NMFS should include a "Habitat Concerns" section in all SARs.

*Response:* NMFS disagrees. MMPA section 117(a)(3) requires a discussion of habitat concerns only in certain SARs ("for a strategic stock, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat..."). Accordingly, such discussion is included where habitat effects may have a substantial population effect (one that could cause a decline or impede recovery).

*Comment 2:* The SARs tend to lag about two years behind the latest data on fishery mortality. In those fisheries where there is 100 percent observer coverage, the data are received in near "real-time" and could be incorporated sooner so that management decisions are based upon the latest information.

*Response:* Although data are produced in near "real-time" in some cases, the data must be reviewed for quality assurance purposes prior to use in SARs or supporting management decisions. Fluctuations in estimates of mortality and serious injury tend to be relatively small because NMFS uses 5-year averages in most cases, and the PBR approach was tested and found to be robust for underestimates of mortality and serious injury or the precision of these estimates in meeting performance goals.

*Comment 3:* Many stocks have "undetermined" PBR because abundance estimates are more than eight years old. There is no excuse for failing to update abundance estimates for many of these stocks. Given the precautionary principles incorporated into the MMPA, any such stocks should be designated as strategic because NMFS cannot conclude that mortality does not exceed PBR.

*Response:* Funding limitations prevent more frequent surveys for updating abundance estimates. Funding requests have been formulated considering Administration priorities for marine resource conservation and other national needs.

The MMPA includes specific criteria for designating a marine mammals stock

as "strategic." These criteria include (1) human-caused mortality and serious injury at levels above PBR, (2) a designation or listing as a depleted, threatened or endangered species or stock, and (3) declining status likely to result in the stock's or species' listing as a threatened or endangered species. NMFS' guidelines for preparing stock assessment reports provide guidance for determining status in situations where insufficient information is available for a comparison of human-caused mortality and serious injury to PBR. The guidelines state, "If the human-caused mortality is believed to be small relative to the stock size based on the best scientific judgment, the stock could be considered as non-strategic. If human-caused mortality is likely to be significant relative to stock size (e.g., greater than the annual production increment) the stock could be considered as strategic." Accordingly, each such situation is addressed individually and considered by NMFS experts and members of the appropriate SRG before a determination is made on the stock's status.

*Comment 4:* The SARs do a good job of addressing PBR and human-caused mortality and serious injury.

*Response:* Comment noted.

*Comment 5:* "Other Mortality" sections of the SARs do not comprehensively address projections for many activities (e.g., military and commercial activities, scientific research, climate change, decreases in fish stock size).

*Response:* The "Other Mortality" sections in SARs report only direct human-caused mortality, and the reported levels reflect only the known or estimated levels of mortality and serious injury. The activities included in these sections include only those for which mortality estimates or reports are available.

*Comment 6:* The reported mean annual takes do not reflect the projected increases in impacts or address preservation or stewardship aspects of many actions that could affect marine mammals.

*Response:* This comment is correct. The SARs do not report on everything that is known, projected, or suspected about each stock of marine mammals. Rather, the SARs are limited to emphasize the key elements required by MMPA section 117, which form the scientific basis supporting implementation of the regime to govern interactions between marine mammals and commercial fishing operations in MMPA section 118.

*Comment 7:* The Scientific Committee of the International Whaling

Commission should be provided an opportunity to review the SARs and comment on them.

*Response:* The Scientific Committee has an opportunity to review the SARs during the 90-day public comment period; however, NMFS does not plan to add an additional step in the SAR process by requesting a formal review by the Scientific Committee. Many of the scientists on the U.S. delegation to the Scientific Committee meetings are NMFS staff, and these scientists prepare, provide input to, or review the SARs. In addition, the SARs are prepared by NMFS experts, reviewed by additional experts within NMFS and on regional SRG, and subjected to public review and comment. Furthermore, much of the information contained in the SARs is extracted from the peer-reviewed literature. An additional review step is unnecessary.

*Comment 8:* NMFS should invest in the development of technologies and methods that will help address questions about population status and habitat use and, therefore, guide management strategies, particularly those aimed at avoiding adverse human effects.

*Response:* NMFS invests, to the extent appropriations allow, in such technologies and methods.

*Comment 9:* NMFS should work with other agencies conducting research related to marine mammals for the purposes of coordinating scientific efforts and sharing data and results.

*Response:* NMFS and other agencies (state and Federal) generally coordinate marine mammal-related research so that efforts are not duplicated and existing information is shared. NMFS reviews surveys conducted by other entities for potential incorporation into SARs and will continue to use the best available information to prepare SARs.

*Comment 10:* NMFS should work with Federal and state fisheries management agencies and industry to develop a funding strategy that would support more effective observer programs for collecting data on incidental fisheries-related mortality and serious injury of marine mammals.

*Response:* NMFS established a National Observer Program in 1999 to combine program-specific observer effort for efficiency and to promote sustainable funding for a comprehensive marine resource observer program. The National Observer Program has been working with fishery management agencies and the fishing industry to meet these objectives and will continue to do so. The National Observer Program, in coordination with all six NMFS regions, is completing a National

Bycatch Report to compile species- and fishery-specific bycatch estimates for fish, marine mammals, sea turtles, and sea birds. This initiative will incorporate the development of fishery improvement plans to improve the collection of bycatch data and bycatch estimation methodologies. These improvement plans will also provide a comprehensive assessment of resources required to improve bycatch in U.S. commercial fisheries.

*Comment 11:* NMFS should develop and implement a systematic and comprehensive approach for incorporating and considering all risk factors, including those that directly affect marine mammals and those that affect habitat, into the SARs.

*Response:* NMFS disagrees. The description of SARs included in MMPA section 117 indicates that SARs should focus primarily on the information necessary to evaluate the impact of direct human-caused mortality and serious injury. Such information includes abundance and productivity estimates, calculations of PBR, and estimates of human-caused mortality and serious injury by source. In some cases (where other factors may be causing a decline or impeding recovery of strategic stocks), SARs contain a discussion of other factors. Expanding the SARs to include substantially more information on a wide variety of potential risk factors would detract from their main purpose, which is to be a concise summary of the information needed to implement the regime to govern interactions between marine mammals and commercial fishing operations.

#### *Comments on Alaska Regional Reports*

*Comment 12:* Given the observed and projected impacts of sea-ice loss on ice-dependent pinnipeds, NMFS should declare all the ice-dependent seals under its jurisdiction to be strategic stocks.

*Response:* Observed or projected impact of sea-ice loss is not among the criteria in the MMPA for determining whether or not a stock is strategic. Accordingly, such impacts are not considered in the determination. Also, see response to Comment 3.

*Comment 13:* The SARs must address the most important threats to a given species. For ice-dependent seals, the Habitat Concerns section should be expanded to include more than a single sentence.

*Response:* The SARs for ribbon seals, ringed seals, spotted seals, and bearded seals are scheduled to be reviewed, and updated if appropriate, in the 2009 SARs. The Habitat Concerns sections for

these stocks will be updated if appropriate. The Habitat Concerns section is optional, not a requirement of the SARs; see response to comment 27.

*Comment 14:* The draft SAR includes beluga whales in Yakutat as part of the Cook Inlet stock although the ESA listing rule notes the Yakutat belugas are genetically and geographically isolated from Cook Inlet belugas. Given their small population size, Yakutat belugas should be designated a depleted stock.

*Response:* Although the preamble to a rule promulgated under the ESA states that beluga whales occupying Yakutat Bay are discrete from beluga whales in Cook Inlet (72 FR 62919, October 22, 2008), regulations promulgated under the MMPA (50 CFR 216.15(g)) explicitly include beluga whales occupying Yakutat Bay as part of the depleted Cook Inlet stock. Accordingly, the beluga whales occupying Yakutat Bay are depleted under the MMPA. Designating the beluga whales in Yakutat Bay as a stock separate from those in Cook Inlet would require notice-and-comment rulemaking following a review of the status of these animals in accordance with MMPA section 115.

*Comment 15:* The abundance estimate for beluga whales, Eastern Chukchi Sea stock, is outdated, and the PBR was changed to "undetermined". In three of the past six years, subsistence harvest, which do not include struck-and-loss corrections, has met or exceeded the PBR of 74. Furthermore, the recovery factor of this stock should be reduced from 1.0 to 0.5, which is the appropriate recovery factor for a stock of unknown status. If the proper recovery factor were used, the PBR would be 37, which is below annual human-caused mortality for five of the last 6 years. In light of the high level of harvest, combined with the impacts of global warming and increasing oil industry activity in its range, this stock should be considered strategic.

*Response:* NMFS' guidelines for preparing stock assessment reports provide guidance for determining status in situations where insufficient information is available for a comparison of human-caused mortality and serious injury to PBR. The guidelines state, "If the human-caused mortality is believed to be small relative to the stock size based on the best scientific judgment, the stock could be considered as non-strategic. If human-caused mortality is likely to be significant relative to stock size (e.g., greater than the annual production increment) the stock could be considered as strategic." NMFS scientists have determined that human-caused mortality is likely less than the

annual production increment and presented this determination to the Alaska SRG in January 2008 before the SAR was made available for public review and comment. The 5-year mean mortality/serious injury estimate was below the former PBR of 74.

Accordingly, the stock retains a status of "non-strategic". Also, see response to Comment 3.

*Comment 16:* NMFS should proceed with formal recognition of 12 stocks of harbor seals in Alaska and proceed with research and management of those stocks as set forth in the MMPA.

*Response:* NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, Comment 16) and 2007 (73 FR 21111, April 18, 2008, Comment 23). As in the past, NMFS continues its commitment to work with its co-managers in the Alaska Native community to evaluate and revise stock structure of harbor seals in Alaska.

*Comment 17:* Given the approval by the Secretary of the Interior of a plan for oil and gas lease sales in the range of North Pacific right whales, Eastern North Pacific stock, 2007–2012, the SAR should include more than "recent interest" in oil and gas exploration and development to reflect the more formal evaluation for leasing.

*Response:* At this time, previously-proposed lease sales are being reevaluated. Given that there is considerable uncertainty about whether lease sales will occur, it is currently unnecessary to expand on what lease sales may occur within the range of the North Pacific right whale.

*Comment 18:* The maps and stock descriptions of humpback, fin, and minke whales should be changed to include recent sightings in the Chukchi and Beaufort Seas.

*Response:* NMFS will review the recent sightings of humpback, fin, minke, and gray whales in the Chukchi and Beaufort Seas, and update the maps and geographic range information in the 2009 SARs accordingly.

*Comment 19:* NMFS should include the narwhal in its Alaska SARs due to apparent increasing sightings and take authorizations issued for the species.

*Response:* In accordance with the MMPA, NMFS prepares SARs for species or stocks that occur in waters under U.S. jurisdiction and interprets this requirement to exclude those species or stocks for which there is a remote likelihood of occurring in U.S. waters (e.g., stocks for which only the margins of the range extends into U.S. waters or that enter U.S. waters only during anomalous current or temperature shifts). NMFS is currently

collecting and reviewing available narwhal sightings information and will consider whether a future SAR is appropriate after the review is complete.

*Comment 20:* The SAR for humpback whales, Central North Pacific stock, must use the recently released data from the Structure of Populations, Levels of Abundance, and Status of Humpbacks (SPLASH) project, which represents the best population data available. The SAR appropriately rejects the abundance estimates based upon 1993 survey data as being outdated; however, it incorrectly states that the PBR is undetermined. The SPLASH data indicate a significant population increase, resulting in more than doubling of the stock's population estimate.

*Response:* The final SPLASH report was released in May 2008 (Calambokidis et al., 2008), after the draft 2008 SARs were prepared. NMFS will be using the data provided in this report to partially update the draft 2009 SARs and plans a full update of the Pacific humpback whale SARs in 2010.

Comments 21 through 27 refer to the SAR for gray whales, Eastern North Pacific stock.

*Comment 21:* The SAR for gray whales does not properly consider the findings of Alter et al. (2007). The SAR concludes their analysis is irrelevant because an estimate of the abundance 1100–1600 years ago does not necessarily represent current carrying capacity (K); however, the SAR cites no authority for this conclusion. Wade's (2002) analysis supports the conclusion in Alter et al. (2007) through the inability to reconcile the catch history from the 1800s with the recent time series of abundance data. Uncertainties regarding this stock's long-term response to climate change support a precautionary approach to management, and NMFS should designate the stock as depleted.

*Response:* As noted in responses to comments on the 2007 SARs (73 FR 21111, April 18, 2008), NMFS considered the findings of Alter et al. (2007), in addition to publications in response to Alter et al. (2007) (e.g., Palsboll et al. 2007) and concluded these findings do not indicate the stock is depleted. Furthermore, the MMPA does not include uncertainties regarding a stock's long-term response to climate change among the criteria within the definition of "depleted".

Neither the MMPA nor its legislative history defines K. NMFS interpreted the use of K within the MMPA to mean current carrying capacity in a legislative proposal submitted to Congress after extensive internal and interagency

review and two separate opportunities for public review and comment. Accordingly, an abundance of the population more than 1,000 years ago cannot be a reasonable proxy for K.

*Comment 22:* The draft SAR has not used or reported the best scientific information available. For example, many of the estimates in the SAR are older than those in NMFS' draft Environmental Impact Statement (DEIS) on the Makah's request for a limited waiver of the MMPA's moratorium to allow them to continue their treaty right of hunting for gray whales. NMFS should explain why two different sets of data are presented in these documents.

*Response:* The abundance estimate of 18,813 reported in the draft 2008 SARs is based on the mean of the 2000/01 and 2001/02 abundance estimates. The abundance estimate of 20,110 reported in the DEIS is based on the results of the 2006/07 census. The draft 2008 SARs were prepared and updated prior to the availability and publication of Rugh et al. (2008), which analyzed the results of the 2006–2007 census of the eastern North Pacific stock of gray whales. This information will be included in the gray whale SAR in a future revision.

*Comment 23:* The ramifications of calculating a PBR based upon a highly inflated recovery factor and minimum abundance (Nmin) are unknown. The recovery factor for all other large whales is set at 0.1, and that for gray whales is 1.0. NMFS cannot claim the population is healthy. Nmin has not been adjusted to account for the population collapse in 1999 and 2000 in which a third or more of the population was lost.

*Response:* Most large whale species are listed as "endangered" under the ESA and, thus, have been assigned a recovery factor of 0.1 as indicated in NMFS' guidelines for assessment marine mammal stocks. The eastern North Pacific gray whale stock was removed from the list of endangered species in 1994 and is currently within its optimum sustainable population (OSP) (Wade and Perryman 2002; Punt et al. 2004). A major purpose of the recovery factor is to allow a portion of net annual production to be used for recovery to OSP. Because this stock is within its OSP, no recovery is necessary.

Nmin was calculated from an abundance estimate based on surveys after the 1999–2000 stranding event. Therefore, the current value of Nmin incorporates effects of this stranding event.

*Comment 24:* There is substantial inconsistency among documents produced by NMFS scientists on

estimates of K; therefore, the value of K in the draft SAR has no validity.

*Response:* NMFS has produced documents with a range of estimates for K because NMFS has used alternative models for analyzing data and because new information has become available since the first estimate of K was published. Wade's (2002) analysis included multiple models and identifying the "best" model for interpretation of the results. Therefore, the calculation of alternative estimates for K was an integral part of the analytical process, which produced a more robust estimate of K than would occur from using a single model. As new information has been obtained (e.g., additional abundance estimates or revisions to the models used in estimating abundance), the entire data set is re-analyzed using the approaches in Wade (2002). Furthermore, the various estimates of K are in general agreement.

*Comment 25:* The extent of orca predation on gray whales has been ignored in the draft SAR. Scientists from Monterey and Alaska are documenting mortality rates of up to 30 percent in the gray whale population in some years.

*Response:* The SARs report a variety of information on marine mammals, including abundance, distribution, trends, and human-induced mortality and serious injury. Some information on threats may be included in certain SARs when the estimated severity of the threat significantly affects the stock's status (e.g., killer whale predation is mentioned in the SAR for the Cook Inlet beluga stock). NMFS is not aware of 30–percent mortality rates of gray whales due to killer whale predation.

*Comment 26:* There are several key issues for the PBR in the gray whale SAR. These are as follows:

- (a) PBR is no substitute for comprehensive assessments;
- (b) Maximum sustainable yield is a limit rather than a target;
- (c) The value of Nmin is highly dubious;
- (d) There is no adequate explanation for setting the recovery factor at 1.0;
- (e) The harvest information is not good, as suggested by the inability to reconcile the historical population size to current data;
- (f) It is not clear why the PBR is constant when NMFS claims the population is increasing;
- (g) No papers explicitly review methodology;
- (h) The locations for abundance estimates were changed; and
- (i) Calving figures do not show an exploding population.

*Response:* The subheadings below correspond to the subheadings in the comment:

(a) PBR is not used as a substitute for a comprehensive assessment. Rather, it is included as a requirement of the MMPA;

(b) NMFS agrees, and MSY is not used within the MMPA;

(c) The value of  $N_{min}$  is based on the best available information on abundance and the variance of the abundance estimates.

(d) A recovery factor of 1.0 is appropriate. See response to Comment 23.

(e) Wade (2002) included an additional variance term in the model to account for potential underestimated harvest during the whaling years; thus, his estimates of population parameters incorporate this uncertainty. NMFS is confident that good information is available for the past 5 years, which is the relevant time period for estimating the effect of current human-caused mortality and serious injury.

(f) The PBR level is updated only when there is new information on abundance available. The abundance estimate used in the SARs in both 2005 (the last time the gray whale SAR was scheduled to be updated) and 2008 both use a mean estimate of the abundance estimates from 2000/01 census and 2001/02 census. Therefore, because the abundance estimated calculated from the mean estimates over these years is the same, the PBR level has not changed.

(g) The methodologies for key parameters in the SARs (e.g., those used for PBR) were described in peer-reviewed literature. The guidelines for assessing marine mammal stocks were subjected to peer and public review three different times (59 FR 40527, August 9, 1995; 62 FR 3005, January 21, 1997; and 69 FR 3005, November 18, 2004). Therefore, NMFS maintains that important methodologies used in SARs have been thoroughly reviewed.

(h) Gray whale shore-based counts were conducted from Yankee Point from 1967/1968 to 1973/1974 and then from Granite Canyon in all subsequent years. The two sites are 3 miles apart, and aerial surveys have shown similar distributions of gray whales relative to shore at these sites. The only other time an alternate site was used for a survey was at the end of the migration in 1997/1998; from 11–24 Feb 1998 counts were made from Point Lobos, 5 miles north of Granite Canyon. This change was necessary because the road to Granite Canyon was washed out in a storm. Besides these minor differences in sites, all within a few miles, NMFS has

consistently used the Granite Canyon research station for the past 3 decades.

(i) The population is within its OSP, likely near  $K$ . Consequently, the rate of population growth is expected to be low because  $K$  represents an equilibrium abundance (when birth and death rates are approximately equal). The SAR reflects published information on calving rates, which indicates the calf production indices (calf estimate/total population estimate) from 1994–2000 were between 1.1 percent and 5.8 percent annually (Perryman et al. 2002), and in 2004 the index was 9 percent (Perryman et al. 2004). Gray whale calf counts from shore stations along the California coast have indicated significant increases in average annual calf counts near San Diego in the mid-to late-1970s compared to the 1950s and 1960s, and near Carmel in the mid-1980s through 2002 compared to late-1960s through 1980 (Shelden et al. 2004). This increase may be related to a trend toward later migrations over the observation period (Rugh et al. 2001, Buckland and Breiwick 2002), or it may be due to an increase in spatial and temporal distribution of calving as the population increased (Shelden et al. 2004).

*Comment 27:* The Habitat Concerns section should be expanded to a more comprehensive list of factors that could be affecting gray whale habitat (e.g., wave energy projects, terminals for liquid natural gas shipments, oil and gas lease sales, exploration and development, and noise).

*Response:* Although there are various activities underway or planned that could affect gray whale habitats, none of these factors is likely “causing a decline or impeding recovery of” (MMPA section 117(a)(3)). Accordingly, they are not included in the SAR. Also, see response to Comment 1.

#### *Comments on Atlantic Regional Reports*

*Comment 28:* The 2007 and 2008 Atlantic Ocean SARs do not cite potential risks to *Kogia* species from sonar sound, even though data in the published literature support the concern that military sonar may affect *Kogia* much like it affects beaked whales, and concern has been expressed about the vulnerability of *Kogia* to oil and gas industries in the Gulf of Mexico.

*Response:* The *Kogia* species reports were not updated in 2008. However, the “Other Mortality” discussions in the 2007 reports for the Western North Atlantic stocks of both *Kogia* species note that potential risks due to anthropogenic noise is of concern. NMFS is also concerned about potential effects of anthropogenic noise of *Kogia*

stocks in the Gulf of Mexico and is reviewing the literature for evidence related to this concern. If appropriate, NMFS will address such concern in future revisions of these SARs.

*Comment 29:* NMFS needs to better update bottlenose dolphin stock structure in the Gulf of Mexico. Given the difficulty in assigning fisheries-related mortality to the appropriate stock, all such stocks should be designated as strategic stocks.

*Response:* Research to update stock structure of bottlenose dolphins in the Gulf of Mexico is being conducted on a small scale, and a research plan has been developed to implement more wide-ranging stock structure research as resources become available.

For bottlenose dolphins in the Gulf of Mexico, the 33 Bay, Sound and Estuarine Stocks and the 3 Coastal Stocks are designated as strategic stocks because for each stock, the abundance is unknown and human-related mortality and serious injury has been reported but the levels of such takes are unknown. This is not the case for the Continental Shelf Stock and the Oceanic Stock where for each stock, there are estimates of abundance and fishery-related mortality and serious injury, and for each, fishery-related mortality and serious injury do not exceed PBR.

*Comment 30:* Atlantic white-sided dolphins should be designated as a strategic stock due to increasing bycatch trends.

*Response:* Increasing bycatch trends is not a criterion for strategic status according to the MMPA. The bycatch of Atlantic white-sided dolphins exceeded PBR in the 2000 SAR, and, therefore, the stock was strategic in that report. In subsequent reports, including the 2008 report, bycatch levels have been below PBR, and, therefore, Atlantic white-sided dolphins have not been designated as strategic.

*Comment 31:* Abundance and mortality estimates for short-finned and long-finned pilot whales should be separated based on recent genetic and survey data. These stocks should be designated as strategic stocks. In addition, NMFS should collect sufficient information to determine the abundance, trend, and mortality rates of this stock and determine whether the stock may warrant designation as a depleted stock.

*Response:* NMFS is currently analyzing data collected between 2004 and 2007 to evaluate the spatial distribution and habitats of short-finned and long-finned pilot whales during the summer months. Based upon preliminary results, it is likely that the abundance estimates of the two species

can be separated to develop specific estimates of PBR for each. However, additional data collection is required to separate the mortality and serious injury estimates for the two stocks associated with pelagic longline and other fisheries. As resources become available, NMFS will continue its work to improve the assessment and understanding of the status of these two species.

#### *Comments on Pacific Regional Reports*

*Comment 32:* Mortality estimates for blue whales should be updated to include recent ship strikes in the Santa Barbara ship channel.

*Response:* At the time the draft 2008 report was prepared, complete data on 2007 ship strikes were unavailable. The SAR for blue whales for 2009 will be updated to include 2007 ship strike data, and a brief narrative of the NMFS response to the ship strikes will also be included.

*Comment 33:* All SARs for stocks in the range of the Hawaii-based longline fisheries should separate potential interactions with the deep-set fishery from the shallow-set fishery.

*Response:* In the draft 2008 SAR, all false killer whale interactions were evaluated separately for deep and shallow-set fisheries by NMFS, although some information is presented jointly. Table 1 (footnote 2) in the 2008 SAR indicates that all reported mortalities and serious injuries of false killer whales took place in the deep-set fishery and that no false killer whales were observed killed or injured in the shallow-set fishery. Following the 2009 List of Fisheries, which formally separates deep-set and shallow-set fisheries, the draft 2009 false killer whale SAR will be further modified to discuss and list each fishery separately in both the text and the table.

*Comment 34:* Significant uncertainties and errors continue in the SAR for false killer whales. The SAR incorrectly identifies false killer whales in the Eastern North Pacific Ocean into three stocks based upon boundaries of Exclusive Economic Zones (EEZ). This incorrect stock structure results in an underestimate of the abundance of false killer whales that interact with the deep-set longline fishery. NMFS must address concerns or acknowledge in the SAR the uncertainties that underlie its conclusions.

*Response:* NMFS recognizes that all marine mammal stock assessments have elements of uncertainty. NMFS' assessment framework explicitly takes this uncertainty into account. Uncertainty in abundance and mortality/serious injury estimates is

reported in terms of a statistical measure, the coefficient of variation (CV). The high CVs reported in the SARs explicitly acknowledge the underlying uncertainties. These uncertainties have already been incorporated into the SAR, as requested by the commenter.

The establishment of EEZ-based stocks is consistent with national, peer-reviewed guidelines for assessing marine mammal stocks of species that occur in U.S. and international waters. The guidelines state, "For situations where a species with a broad pelagic distribution which extends into international waters experiences mortalities within the U.S. EEZ, PBR calculations should be based on the abundance in the EEZ." ≥

The abundance and fishery interaction data presented in the SAR have undergone rigorous scientific peer-review, and have been published in scientific journals and technical reports. The abundance estimate is based on over 5 months of survey effort using methodology that is widely accepted by experts to provide unbiased abundance estimates. During this survey, many sightings of a variety of less conspicuous cetaceans were made. The single false killer whale sighting demonstrates and confirms the rarity of this species in the Hawaiian EEZ. Fishery mortality and serious injury estimates have consistently been reported to be underestimates, not exaggerations, because not all cetaceans can be identified and many of the unidentified cetaceans were reported to be "false killer whales or short-finned pilot whales". These unidentified cetaceans have not been included in the assessment calculations. For these reasons, NMFS disagrees that the false killer whale population estimate is underestimated and that the importance of rare interactions with the fishery are exaggerated. The stock assessments are based on the best available, peer-reviewed science and will continue to be refined as new data are analyzed and results become available.

Comments 35 through 37 refer to false killer whales, Hawaii Insular stock or Hawaii Pelagic stock.

*Comment 35:* The conclusion that insular animals are not taken in the long-line fishery is inappropriate, and the insular stock should be considered strategic. A precautionary approach would place the boundary between the insular and pelagic stocks at 51 nmi (the maximum recorded distance to land for a satellite-tagged insular false killer whale).

*Response:* The SAR states that NMFS used sightings information and genetics

data to show there were at least two separate stocks (insular and pelagic) within the Hawaii EEZ and that the boundary between the two stocks may change as new information became available. The rationale for locating the stock boundary was explained in an administrative report (Chivers et al., 2008. Rationale for the 2008 revision to Hawaiian stock boundaries for false killer whales, *Pseudorca crassidens*. Administrative Report LJ-08-04.) NMFS recognizes (1) uncertainty in the stock boundary, (2) there is some overlap between the insular and pelagic stocks, and (3) there is potential for the Hawaii-based longline fisheries to interact with the insular stock of false killer whales when the fishery operates within 75 nmi of the main Hawaiian Islands.

However, a strategic designation is defined in the MMPA to indicate that the documented mortality and serious injury exceeds PBR, and no mortality or serious injury of the insular stock in fisheries has been documented. (Also, see response to Comment 3.) Furthermore, the satellite telemetry information on false killer whale movements was not available when the 2008 SARs were drafted and will be incorporated in the 2009 SARs.

NMFS continues to evaluate false killer whale stock boundaries and stock-specific mortality and serious injury as new data become available and are peer-reviewed. NMFS includes such new information into the SARs as appropriate.

*Comment 36:* New information is available from recently published studies on population trends, persistent pollutants, and telemetry data and should be included in the SAR.

*Response:* The information identified by the commenter was not yet published or peer-reviewed when the 2008 SARs were drafted. It will be added to the 2009 draft SAR.

*Comment 37:* As the draft SAR for the insular stock indicates, there is no documented mortality of these whales incidental to shallow-set longline fishing. If, however, such fishing is increased as indicated in a proposed change to the fishery management plan, there is likely to be increased bycatch of insular and pelagic stocks of false killer whales.

*Response:* The shallow-set fishery has had 100 percent observer coverage since the implementation of new regulations in 2004 and would continue to have 100 percent coverage under the proposed new plan. Incidental mortality and serious injury of false killer whales in this fishery in the future would be recorded by on-board observers and included in future stock assessments.

Dated: April 24, 2009.

**David Cottingham,**

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

[FR Doc. E9-9812 Filed 4-28-09; 8:45 am]

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## COMMODITY FUTURES TRADING COMMISSION

### Energy and Environmental Markets Advisory Committee Meeting

This is to give notice that the Commodity Futures Trading Commission's Energy Markets Advisory Committee will conduct a public meeting on Wednesday, May 13, 2009. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 from 8 a.m. to 12 p.m. The purpose of the meeting is to discuss energy and environmental market issues. The meeting will be chaired by Commissioner Bart Chilton, who is Chairman of the Energy and Environmental Markets Advisory Committee.

*The agenda will consist of the following:*

- (1) Call to Order and Introduction;
- (2) Current Market and Regulatory Developments;
- (3) Environmental Commodity Markets: The CFTC and a Carbon-Constrained World;
- (4) Energy Price Volatility and Consumers;
- (5) Discussion of Future Meetings and Topics;
- (6) Adjournment.

The meeting is open to the public. Any member of the public who wishes to file a written statement with the committee should mail a copy of the statement to the attention of: Energy Markets Advisory Committee, c/o Commissioner Bart Chilton, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Commissioner Chilton in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Commissioner Bart Chilton at 202-418-5060.

Issued by the Commission in Washington, DC, on April 24, 2009.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. E9-9869 Filed 4-28-09; 8:45 am]

BILLING CODE P

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education; Overview Information; Predominantly Black Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.382A.

#### DATES:

*Applications Available:* April 29, 2009.

*Deadline for Transmittal of Applications:* May 29, 2009.

*Deadline for Intergovernmental Review:* July 28, 2009.

#### Full Text of Announcement

##### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Predominantly Black Institutions (PBIs) Program is to strengthen PBIs to carry out programs in the following areas: Science, technology, engineering, or mathematics (STEM); health education; internationalization or globalization; teacher preparation; or improving educational outcomes of African-American males.

*FY 2009 Competition Background:* The PBIs Program was originally authorized under Title IV, Part J, Section 499A of the Higher Education Act of 1965 (HEA), as amended by the College Cost Reduction and Access Act (CCRAA) of 2007. The Higher Education Opportunity Act, which reauthorized the Higher Education Act, transferred the PBIs program to Title III, Part F, Section 371 of the HEA.

**Program Authority:** Title III, Part F, Section 371 of the Higher Education Act of 1965 (HEA), as amended.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99.

##### II. Award Information

*Type of Award:* Discretionary grants.  
*Estimated Available Funds:* \$6,000,000.

*Estimated Size of Awards:* \$600,000.

*Estimated Number of Awards:* 10.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 12 months.

## III. Eligibility Information

1. *Eligible Applicants:* Your institution must be designated as an eligible applicant under Title III of the HEA. The regulations can be found in 34 CFR 607.2 through 607.5. In addition, your institution must:

(a) Have an enrollment of needy students as defined by section 371(c)(3) of the HEA. The term *enrollment of needy students* means the enrollment at an institution of higher education with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(i) In the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(ii) Come from families that receive benefits under a means-tested Federal benefit program (as defined in section 371(c)(5) of the HEA);

(iii) Attended a public or nonprofit private secondary school—

(A) That is in the school district of a local educational agency that was eligible for assistance under Part A of Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA) for any year during which the student attended such secondary school; and

(B) Which for the purpose of this paragraph and for that year, was determined by the Secretary (after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of the ESEA exceeds 30 percent of the total enrollment of such school; or

(iv) Are first-generation college students (as that term is defined in section 402A(h) of the HEA), and a majority of such first-generation college students are low-income individuals. The term low-income individual has the meaning given that term in section 402A(h) of the HEA.

(b) Have an average educational and general expenditure which is low, per full-time equivalent undergraduate student in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions of higher education that offer similar instruction. The Secretary may waive this requirement, in accordance with section 392(b) of the HEA, in the same manner as the Secretary applies the waiver requirements to grant applicants under section 312(b)(1)(B) of the HEA;

(c) Have an enrollment of undergraduate students—