

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 7, 2011.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XW72

#### 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). The 2010 reports are 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:** Shannon Bettridge, Office of Protected Resources, 301-713-2322, ext. 141, [Shannon.Bettridge@noaa.gov](mailto:Shannon.Bettridge@noaa.gov); Robyn

Angliss, Alaska Fisheries Science Center, 206-526-4032, [Robyn.Angliss@noaa.gov](mailto:Robyn.Angliss@noaa.gov); Gordon Waring, Northeast Fisheries Science Center, 508-495-2311, [Gordon.Waring@noaa.gov](mailto:Gordon.Waring@noaa.gov); or Jim Carretta, Southwest Fisheries Science Center, 858-546-7171, [Jim.Carretta@noaa.gov](mailto:Jim.Carretta@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs 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 (PBR) level, 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 2010, and the revised reports were made available for public review and comment (75 FR 46912, August 4, 2010). 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 2010 are available (see **ADDRESSES**).

##### Comments and Responses

NMFS received letters containing comments on the draft 2010 SARs from the Marine Mammal Commission (Commission), five non-governmental organizations (National Resources Defense Council, Humane Society of the United States, Cascadia Research Collective, California Gray Whale Coalition, and Hawaii Longline Association), and one individual. Most letters contained multiple comments.

Unless otherwise noted, comments suggesting editorial or minor clarifying

changes were incorporated in the reports but were not included in the summary of comments and responses below. Other comments recommended initiation or repetition of large data collection efforts, such as abundance surveys, observer programs, or other mortality estimates. Comments on actions not related to the SARs (e.g., listing a marine mammal species under the Endangered Species Act (ESA)) are not included below. Many comments, including those from the Commission, recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in previous years. Although NMFS agrees that additional information would improve the SARs and better inform conservation decisions, 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 2010 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 2010 SARs. The delay is due to the schedule of the 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.

##### Comments on National Issues

**Comment 1:** The Commission recommended that NMFS review its observer program nationwide, set standards for observer coverage, and prepare plans to collect the information necessary to adequately estimate incidental mortality in fisheries that take or may take marine mammals. NMFS should also work with Federal and state agencies and the fishing industry to develop a funding strategy for supporting adequate observer coverage to estimate incidental mortality and serious injury of marine mammals and other protected species.

**Response:** NMFS has conducted multiple comprehensive, nationwide reviews of its observer programs beginning with the 2004 Evaluating Bycatch Report, which developed a

national approach to standardize bycatch reporting methodologies and monitoring programs and included specific recommendations for attaining reliable bycatch estimates for protected species and identified gaps in existing coverage. NMFS will soon publish the first National Bycatch Report, which estimates commercial fisheries bycatch for U.S. living marine resources. The report also identifies gaps in existing observer coverage with specific recommendations for additional resources required to improve bycatch data collection and estimation methods, which will form the basis of a funding strategy to support adequate observer programs for all living marine resources.

NMFS has taken several steps to address shortcomings in protected species observer coverage, including observer coverage in the Gulf of Mexico reef fish fishery and a doubling of observed sea days in the American Samoa longline fishery in FY2010. In 2011, NMFS implemented observer coverage in the menhaden purse seine fishery in the Gulf of Mexico to collect catch data and record bycatch of sea turtles and marine mammals that interact with the fishery. NMFS is preparing to observe the Southeast Alaska drift gillnet fishery, beginning in 2012.

NMFS continues to work collaboratively with state, federal, and industry partners to implement observer programs and develop alternative funding options. Currently three observer programs receive industry funding. Recently, the North Pacific Fishery Management Council approved provisions to restructure the Gulf of Alaska and Bering Sea/Aleutian Islands groundfish fisheries observer program, including a 1.25% ex-vessel landings fee to pay for observer coverage. NMFS continues to address gaps in coverage and works to improve the estimates of protected species bycatch by increasing observer coverage as funds become available.

A description of the marine mammal programs criteria for observer coverage (expressed in terms of bias and precision of mortality estimates) is available in a NOAA Technical Memorandum describing the resources needed to better understand the status of protected species. This report is available on the Internet at the following address: [http://www.nmfs.noaa.gov/pr/pdfs/sars/improvement\\_plan.pdf](http://www.nmfs.noaa.gov/pr/pdfs/sars/improvement_plan.pdf).

*Comment 2:* The Commission recommended that NMFS develop a strategy for collaboration with other nations to improve assessment and conservation of transboundary stocks of marine mammals.

*Response:* NMFS, through the Office of International Affairs, is preparing a comprehensive international action plan for marine mammal conservation. As this plan is being developed, NMFS is also evaluating strategies to obtain information on the marine mammal conservation programs in other nations pursuant to MMPA section 101(a)(2).

*Comment 3:* The Commission recommended that NMFS develop and implement a systematic approach for integrating all human-related risk factors into SARs.

*Response:* MMPA section 117(3) contains directions for including risk factors in SARs. The MMPA states SARs should estimate annual human-caused mortality of each stock, by source, and, for strategic stocks, other factors that may be causing a decline or impeding recovery of the stock, including effects on marine mammal habitat and prey.

#### *Comments on Alaska Regional Reports*

*Comment 4:* The Commission reiterated its earlier recommendation to update harbor seal stock structure in Alaska by recognizing 12 stocks of harbor seals.

*Response:* As noted in previous responses to comments (see 72 FR 12774, March 15, 2007, comment 16; 73 FR 21111, April 18, 2008, comment 23; 74 FR 19530, April 29, 2009, comment 21; and 75 FR 12498, March 16, 2010, comment 12), 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. On March 16, 2010, NMFS and the Alaska Native Harbor Seal Commission held their annual co-management meeting during which they agreed to proceed with a revised set of population boundaries for harbor seals in Alaska. All representatives of the co-management committee agreed that a population structure of twelve stocks would be incorporated into the next cycle of SARs. NMFS is currently in the process of drafting the 2011 SARs, which will include separate evaluations of 12 harbor seal stocks for Alaska.

*Comment 5:* The Commission recommended that NMFS continue to seek the additional support needed to develop and implement an ice seal research and management strategy that is commensurate with the threats that these species face.

*Response:* NMFS agrees that it is necessary to increase the understanding of the distribution and movements, demographic parameters, natural history, and ecology of ringed, bearded, ribbon, and spotted seals in Alaska. NMFS has completed status reviews of

these four species, and it is apparent that more information is needed in order to assess any potential threats or the impact to the species. NMFS continues to request appropriations for ice seals to the extent consistent with other priorities of the Administration for the national budget. NMFS also partners with other agencies to support research and monitoring of ice seals to the extent such activities are consistent with the priorities of these agencies.

*Comment 6:* The Commission recommended that NMFS ensure funding for research on the eastern stock of North Pacific right whales is incorporated into the Administration's fiscal year 2012 budget, whether that funding is provided to the Service or to the Bureau of Ocean Energy Management, Regulation, and Enforcement.

*Response:* NMFS recognizes the importance of seeking the necessary funding in order to continue to monitor the population status of eastern stock of North Pacific right whales and will continue to seek resources to study this critically endangered population.

*Comment 7:* The Commission recommended that NMFS provide updated estimates of serious injury and mortality for the 11 stocks of marine mammals identified in the 2009 reports but not updated in the 2010 drafts, or at least explain why that information is not available.

*Response:* Serious injury and mortality data from the observer program for 2007 and 2008 are considered preliminary. Stocks lacking updated serious injury and mortality data for 2007 and 2008 were either not scheduled for updates in 2010 or had no takes reported during those years. NMFS intends to update the estimates of serious injury and mortality in the draft 2011 SARs when the serious injury and mortality data are finalized for the relevant stocks.

*Comment 8:* The SAR for the Eastern U.S. stock of Steller sea lions should be changed to reflect updated taxonomy. The Society for Marine Mammalogy recognizes the species *Eumetopias jubatus* (Schreber, 1776) for the Steller sea lion, or northern sea lion, consisting of two subspecies, *E. j. jubatus* (Schreber, 1776) [the Western Steller sea lion] and *E. j. monteriensis* (Gray, 1859) [Loughlin's northern sea lion].

*Response:* The agency is currently conducting a status review of Steller sea lions and upon completion of the review will revisit the possible designation of subspecies within this taxon, together with existing supporting scientific evidence.

*Comment 9:* NMFS is applauded for the inclusion of a stock assessment for narwhals. Given the large number of unknowns in the stock assessment, NMFS should prioritize research to fill data gaps.

*Response:* NMFS recognizes there are a large number of unknowns in Alaska stock assessments and will continue to strive to collect data to fill research gaps for narwhals and other marine mammals of Alaska.

*Comment 10:* The Humane Society of the U.S. (HSUS) appreciated addition of concerns about anthropogenic noise in the SARs for beaked whales.

*Response:* NMFS acknowledges and thanks you for this comment.

*Comment 11:* NMFS needs to devote resources to obtaining reliable estimates of subsistence hunting of pinnipeds. A number of SARs for various ice seals (e.g. bearded seals) still state that harvest estimates are from the 1980s and include estimates of thousands of seals being killed. It is vital that there be a concerted effort to quantify subsistence takes and report them in a timely manner such that their conservation status can be reliably tracked.

*Response:* NMFS recognizes the need for obtaining reliable estimates of subsistence takes of all pinniped species in Alaska, including ice dependent seal species. NMFS responded to this comment in the notice of availability of the final SARs for 2006 (72 FR 12774, March 15, 2007, comment 18) and for 2007 (73 FR 21111, April 18, 2008, comment 12). NMFS has insufficient resources to obtain up-to-date estimates of subsistence hunting of pinnipeds and will retain old information, with appropriate dates and caveats if necessary, to document the extent of knowledge on past harvest. In the meantime, NMFS is exploring options for better quantifying the annual harvest of pinnipeds, particularly ice seal species.

*Comment 12:* Many of the ice seal stocks do not have abundance estimates or PBRs calculated. There needs to be greater precision in mortality estimation, and there is an urgent need for population abundance estimates.

*Response:* NMFS recognizes the need for obtaining reliable abundance estimates from which PBR levels can be derived, and continues to strive to acquire funding to support abundance estimate surveys and accurate mortality estimates.

*Comment 13:* Prior ice seal stock assessments have provided point estimates for native subsistence kills but have also provided upper and lower estimates based on the bounds of confidence. This is no longer done in

the stock assessments and the region should reconsider this decision. Because of the imprecision of these estimates, this information should be provided so that reviewers can gauge the possible range of impacts.

*Response:* As noted in a previous response (75 FR 12498, March 16, 2010, comment 19) NMFS has reported upper and lower confidence limits for subsistence harvests of some stocks in the past but does not include them presently (e.g., beluga whales, Eastern Bering Sea stock). The SARs for these stocks note that variance estimates (or other measures of uncertainty) are not available. Without such measures, confidence limits cannot be calculated; therefore, none are included. For some stocks, the mortality estimates are noted to be underestimates because information is available from only a portion of the range of the stock. NMFS is aware of the potential consequences of underestimates, but funding levels limit the ability to initiate large new data collection programs until additional funds are obtained or until efforts directed toward other stocks are no longer necessary, which would allow resources to be re-directed.

*Comment 14:* HSUS commented that many fisheries with either a history of interactions or a high likelihood of interactions remain unobserved or inadequately observed. The region should prioritize funding for fishery observers for the many fisheries (largely gillnet fisheries) that may be interacting with species of concern (e.g., belugas, Pacific white sided dolphins, harbor porpoise). Information on marine mammal interactions with trawl fisheries (including the Bering Sea/Aleutian Islands) has not been updated since 2006. This delay does not occur in other regions and is not acceptable. HSUS added that there is a note in the previous SAR for humpbacks in the Western North Pacific stock that data on fisheries interactions will be available for inclusion in the 2010 SAR, yet it is not. Instead, this statement was crossed out and the information remains outdated. The region needs to update information and report in a timelier manner as do other regions.

*Response:* The NMFS Alaska Region has been implementing an observer program for various state fisheries as resources allow. As noted in the SARs, federal fisheries observer data from 2007 and 2008 are preliminary; estimates of percent observer coverage and coefficients of variation (CVs) are not currently available for some preliminary data. A consultation between the Alaska SRG and the Atlantic SRG (with assistance from the NMFS Northeast

Fisheries Science Center) at the 2010 Alaska SRG meeting regarding addressing poorly observed fisheries provided some suggestions from the Atlantic SRG. Observer coverage for southeast Alaska fisheries is being addressed with a traditional observer program.

*Comment 15:* HSUS points out that several stocks in Alaska have PBRs calculated yet appear to be far below their original numbers and declining in major portions of the range. HSUS highlights the approach taken by the Pacific region with regard to Hawaiian monk seals in which the Pacific region states the stock's dynamics do not conform to the underlying model for calculating PBR such that PBR for the Hawaiian monk seal is undetermined. This seems a more appropriate and prudent approach, and HSUS believes that the Alaska region should consider it.

*Response:* This issue was discussed at the Guidelines for Assessing Marine Mammal Stocks III workshop in February 2011, and NMFS will follow guidelines developed at this meeting once they are released. Until then, NMFS will continue to calculate PBR for Alaska stocks for which we have reliable abundance estimates that are less than 8 years old, as per the 2005 Guidelines for Assessing Marine Mammal Stocks.

*Comment 16:* While the counts of western Steller sea lions reported in the text document overall increases (e.g., the pup count reported for the Bering Sea/Aleutian Islands went up from the previous estimate of 5,456 to 5,664) and notes only a possible decline in the western Bering Sea and off Russia, figure 2 and table 1 both indicate that, in the Aleutians, the stock may still be declining. The text in the section on population trends of this stock also reflects a decline in the central and western Aleutians. It would be clearer to provide some of this information on the decline in the Aleutians in the section on population size.

*Response:* NMFS disagrees. Information on the decline of populations in the central and western Aleutian Islands (–30% and –16%, respectively) is presented in the Current Population Trend section, which is the appropriate section for this information.

*Comment 17:* The draft SAR notes that there were two cases of illegal shooting of Steller sea lions documented in southeast Alaska between 1995 and 1999 with no records of illegal shooting in the enforcement records for 1999–2003. Between 2004 and 2008, NMFS accounted for 1 animal from this DPS found with gunshot wound(s) in 2004

and 3 in 2005. No animals from southeast Alaska were counted in the NMFS data base due to NMFS concerns that some of them might have been animals struck and lost by Alaskan native hunters. As such, illegal shooting in Alaska is unaccounted.

*Response:* Animals found with evidence of gunshot wounds, without conclusive results of the source of these wounds, are not reported as illegal takes since there is the probability that these takes were already accounted for as struck and loss in the subsistence harvest. Illegal shootings, as determined by enforcement investigations, are reported separately if there is conclusive information indicating that the shooting was illegal.

*Comment 18:* Deaths affecting the eastern Steller sea lion stock have occurred in addition to those reported by NMFS in the 2010 draft SAR. They include one Steller sea lion that was found shot on Orcas Island in the San Juan Islands in 2006, and two that died in 2008 in traps set in the Columbia River as part of a state lethal taking program aimed at California sea lions. In 2010 one or more shooters killed 10 sea lions in Washington State, with at least one Steller sea lion.

*Response:* NMFS appreciates the information on these occurrences. The Alaska Fisheries Science Center will work closely with the Northwest Regional Office to determine whether these takes have already been accounted for and will be sure to incorporate any additional human-related serious injuries or mortalities as appropriate.

*Comment 19:* HSUS expressed concern that the 2008 population estimate of northern fur seals declined from the estimates from 2002 and 2007 and that the decline in pups at St. Paul is a major factor in this continued decline. Considering the ongoing decline, and the particularly significant impacts on pup production/survival, the region should consider a lower recovery factor than the default of 0.5.

*Response:* This issue was discussed at the Guidelines for Assessing Marine Mammal Stocks III workshop in February 2011, and NMFS will follow guidelines developed at this meeting once they are released. Until then, NMFS will continue to use a recovery factor of 0.5 for this stock.

*Comment 20:* Although the conservation plan for fur seals was updated in 2007, HSUS suggested that, in light of the ongoing problems facing this stock, a five-year review and updating of this plan should be scheduled for next year.

*Response:* The conservation plan for the Eastern Pacific stock of Northern fur

seals is scheduled to go through the 5-year review process and is expected to be updated by late 2012 or early 2013.

*Comment 21:* In the draft 2010 SAR, the data on observer coverage and estimated mortality for most commercial fisheries in 2007 and 2008 (3 and 2 years ago respectively) remain unavailable. Mortality estimates should be updated in a timely manner as they are in other regions.

*Response:* NMFS recognizes that it is important to routinely provide updated mortality estimates in the SARs.

However, due to changes in staffing and database structure, it has taken longer than anticipated to develop new mortality estimates incidental to the federally-regulated commercial fisheries in Alaska. New preliminary estimates for 2007–2009 will be made available in the 2011 draft SARs.

*Comment 22:* The Cook Inlet beluga stock continues to decline despite cessation of directed hunting. The section on Habitat Concerns glosses over the multiplicity of projects recently approved or proposed for areas within or adjacent to those proposed for designation as Critical Habitat. Subsequent to the announcement of proposed critical habitat, NMFS received comments providing greater specificity on some of these projects that include (but are not limited to) proposed new offshore drill platforms and construction and maintenance of pipelines; construction of coal liquefaction and gasification facilities; a proposed Pebble Project that would ship concentrates; shipping of coal; Alaska Railroad Intertie and associated ship traffic as well as utility upgrades for all bordering communities.

*Response:* As noted in previous responses to comments (75 FR 12498, March 16, 2010, comments 1 and 6), section 117 of the MMPA lists information that should be included in SARs. A major strength of the SARs is that they are concise summaries of the status of each stock, focusing primarily on the effects of direct human-caused mortality and serious injury on marine mammals and impacts to habitat when such impacts may result in the decline or failure of recovery of the affected stocks. The MMPA notes that SARs for strategic stocks should include other factors that may be causing a decline or impeding the recovery of the stock, including effects on habitat.

Accordingly, for strategic stocks such as Cook Inlet belugas, such sections must discuss only those factors that may be causing a decline or impeding recovery. The habitat section sufficiently describes activities within the Cook Inlet beluga habitat that may be causing

a decline or impeding recovery, and NMFS will continue to update this section as appropriate.

*Comment 23:* The population abundance estimates for Alaska harbor porpoise stocks are outdated. There is a note in the SAR for the Southeast Alaska stock that an abundance estimate was expected this year (2010) but that has been edited to extend the estimated time of revision to next year (2011).

*Response:* NMFS will report an updated abundance estimate and calculate a PBR level for harbor porpoises in Southeast Alaska after recent survey data are analyzed and published, which should occur in time for the draft 2011 SARs.

*Comment 24:* HSUS expressed concern that observer coverage is lacking for many gillnet fisheries in the range of the various harbor porpoise stocks when gillnets are a major source of mortality for porpoises in most areas throughout the world. The region needs to provide better observer coverage either aboard fishing vessels or from alternative platforms.

*Response:* NMFS recognizes the need for additional resources to support observer programs for those fisheries with little or no observer coverage, including gillnet fisheries in Alaska (see response to comment 5, 73 FR 21111, April 18, 2008, and comment 10, 74 FR 19530, April 29, 2009). In 2011, NMFS and the Alaska Regional Office will be initiating an observer program for gillnet fisheries in southeast Alaska that overlap with areas of harbor porpoise distribution.

*Comment 25:* Takes of porpoise in native subsistence nets in the Bering Sea in particular appears poorly documented.

*Response:* NMFS collects information on harbor porpoise mortalities occurring incidental to subsistence fishing when they are reported.

*Comment 26:* No revisions have been made to the stock definition and geographic range section for the eastern North Pacific gray whale stock, despite the availability of recent information that would otherwise require them. The narrative continues to state the eastern North Pacific population is not an isolated population unit. However, recent work by Dr. Jim Darling and colleagues casts this assumption into question, as it seems that some of these groups may indeed be genetically distinct (Westerly, 2010; Frasier *et al.*, 2010). The stock assessment should be updated to reflect these developments and the most recent information on stock structure.

*Response:* NMFS is aware of the discrete “Pacific coast feeding

aggregation,” and this group is mentioned within the Stock Definition and Geographic Range sections of the 2010 SAR. NMFS appreciates the mention of the new publications and will incorporate these, if appropriate, in the draft SARs for 2011.

*Comment 27:* The gray whale stock assessment report states that in 1997, the IWC approved a 5-year quota (1998–2002) of 620 gray whales, with an annual cap of 140, for Russian and U.S. (Makah Indian Tribe) aboriginals based on the aboriginal needs statements from each country. This is an inaccurate description of what happened at the IWC in 1997. The quota was not based on the needs statements from each country, but only on the needs statement from Russia.

*Response:* At the 49th meeting of the International Whaling Commission, the need request of both the Makah tribe and the Chukotka people were discussed. The Russian Federation requested 140 whales for the Chukotka people, and the USA requested “up to 5 whales” for the Makah tribe. The Report states “The Makah will be coordinating their proposal with the Russian Federation and would present a Schedule amendment to Plenary.” Under 10.3.2.2 Action Arising, the Report states “In the Commission there was extended discussion of the two requests in the context of a joint proposal by the Russian Federation and the USA for a catch of 620 gray whales over five years, with an annual limit of 140.” The Report details some debate about the Makah need, but then states “After further consultations to refine the language, a broad consensus was reached to accept the amendment of Schedule paragraph 13(b)(2) as shown in Appendix 11.” Appendix 11 gives a take limit of 620 gray whales over five years (1998–2002), with an annual limit of 140. It is clear that the Russian and Makah need requests were coordinated and modified from the separate annual requests of 140 and “up to five” to become simply a joint request for 620 over five years with an annual limit of 140. Therefore, the text in the SAR is correct that the quota was set based on the needs statements from each country, as expressed in their joint proposal. This is verified in the next year’s Report (Annual Report of the International Whaling Commission 1998, pg. 14), where it is stated “New Zealand commented that the Makah tribe have not yet drawn on the quota \* \* \*”

*Comment 28:* The gray whale stock assessment report omits mention of the gray whales killed by Makah hunters in 1999 and 2007, though it erroneously states that there was an unlawful hunt

in 2005 (this was the 2007 kill). It was in February of 2005 that the tribe requested a waiver to the MMPA.

*Response:* NMFS has corrected the error to accurately reflect that this illegal kill occurred in 2007 in the draft 2011 reports. Subsistence takes are only reported for the most recent 5 years in the SAR; therefore, the take in 1999 is not included in the SAR.

*Comment 29:* The SARs cite the 2004–2006 multi-national SPLASH effort to better assess humpback whale populations in the Pacific and continue to say with each revision of the SAR that a better understanding of stock structure “should be available in the near future” or “in 2010 or 2011” depending on the stock. Given that NMFS has undertaken a status review of humpback stocks, the lack of availability of this information is troubling. It would seem appropriate to mention the status review that the NMFS is undertaking for all humpback stocks in the sections on stock status.

*Response:* The SPLASH effort was a multidisciplinary project with several objectives and many cooperators, and both photographic and genetic information required analysis. It is not unusual for the results of such a project to take a few years to analyze, integrate, and publish. NMFS will include the new information from SPLASH in the SARs as soon as possible, and will coordinate the inclusion of new information in the SARs with the humpback whale status review, which is underway and expected to be completed in 2011. NMFS will include the relevant results of this review in the SARs when they are available.

*Comment 30:* The only data provided with regard to humpback whale entanglement in the U.S. come from observed fisheries, and many Alaska fisheries are unobserved. In the Atlantic, most of the mortality of humpbacks as a result of fisheries interactions comes from reports of sightings of entangled humpback made by commercial whale watch vessels or recreational boaters. Were there the same number of whale watch and recreational boaters in Alaska as in the Atlantic, there would almost surely be more animals reported as entangled, since trap/pot and gillnet gear similar to that which entangles humpbacks in the Atlantic is also used in Alaska. This sort of caveat might be useful in the SAR.

*Response:* Reports of serious injury and mortality of humpback whales are acquired from two primary sources: Federal fisheries observer data and the Alaska stranding network. Reports from the stranding network include reports from the general public, stranding

responders, vessel captains and crew, law enforcement, researchers, and other sources. NMFS reviews and reports serious injury and mortality records from all these sources, and includes a summary of these data in the SARs.

*Comment 31:* The SAR for central North Pacific humpbacks mentions vessel collisions in Alaska but pays little attention to collisions in the wintering area of Hawaii. There are reports of increasing collisions in Hawaii (particularly off Maui) that do not appear to be simply an artifact of increased reporting or increasing humpback populations.

*Response:* NMFS is reviewing records of mortality and serious injury for humpback whales, including records of ship strikes in Hawaiian waters, for the draft 2011 SARs. All injuries determined to be serious injuries will be reported and included in the mortality and serious injury estimates for 2011.

*Comment 32:* NMFS fails to indicate the 2006/2007 survey of Eastern North Pacific (ENP) gray whales was not an abundance estimate as required under section 117 of the MMPA. There are no provisions in the MMPA which support using the results of field studies to legitimize SARs.

*Response:* As noted in NMFS’ response to a petition to conduct a status review under the MMPA (75 FR 81225, December 27, 2010), these statements are incorrect, and neither statement is relevant to the status of the ENP gray whale stock. The 2006/2007 survey was a full abundance estimation survey. Field and analysis methods, and raw count data, are detailed in a NOAA/AFSC Processed Report (Rugh *et al.*, 2008). Updated estimates and methodologies for this survey are presented in Laake *et al.* (2009). MMPA section 117 requires NMFS to use the best information available to prepare SARs. In the case of ENP gray whales, the best information available includes results of field studies. The reports referenced above are available on the Internet at the following address: [http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/graywhale\\_petition.htm](http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/graywhale_petition.htm).

*Comment 33:* The results of the most recent ENP gray whale abundance estimate (as required under section 117 of the MMPA), undertaken in the 2009/2010 season, have not been published.

*Response:* This statement is correct with respect to the abundance estimate from the 2009/2010 survey for ENP gray whales not being included in the SAR. The statement is incorrect in stating that MMPA section 117 requires the 2009/2010 estimate to be included. Rather, MMPA section 117 requires that SARs

be prepared using the best scientific information available. Estimates from the 2009/2010 survey were not available when the draft 2010 SAR was prepared. NMFS anticipates updating the time series of abundance estimates so the more recent estimates are available in spring 2012 and would be included in the next update of the ENP gray whale SAR.

#### *Comments on Atlantic Regional Reports*

*Comment 34:* HSUS recommended that SARs within the Atlantic region incorporate results of the 2007 workshop on determination of serious injuries. HSUS expressed concern that animals that should be considered seriously injured are not and then disappear from the data base because these whales are never seen again, and the original injury was not "counted" within the time of the 5-year average.

*Response:* NMFS is using recommendations from the 2007 workshop to establish policy and guidelines to distinguish "serious" from "non-serious" injury of marine mammals. The results of this effort, which is expected to be made available for public review and comment in summer of 2011, should promote agency-wide consistency in determining whether or not an injury would likely result in the death of the affected animal.

*Comment 35:* The population estimates of the bay, sound, and estuary stocks of bottlenose dolphins in the Gulf of Mexico are outdated.

*Response:* NMFS agrees.

*Comment 36:* Although there was a 2007 aerial survey-based estimate of the central and eastern Gulf of Mexico coastal bottlenose dolphin stocks, there is no estimate of trends.

*Response:* For a number of reasons, it is difficult to interpret trends from information based on two abundance estimates. NMFS has little information about stock structure and potential movement patterns of dolphins that inhabit these coastal areas. Without contemporaneous estimates of abundance from adjacent areas, it is impossible to know whether dolphins moved either on a short or long term basis. Additionally, there were improvements in the data collection methods between 1993/1994 and 2007 that may confound direct comparison of estimates made during these two periods.

*Comment 37:* Though NMFS acknowledges that the number of observed entanglements is likely an underestimate, NMFS should consider more recent approaches to discerning impacts of commercial fisheries. For

example, one analysis has concluded that humpback whales in the Gulf of Maine likely suffer a 3.7 percent entanglement-related mortality rate (Robbins and Matilla, 2009). Analyses indicate that estimates exceeded observed cases by an order of magnitude and suggest that entanglement is having a much greater effect on the population than previously supposed.

*Response:* When assessing fishing mortality of all large whale stocks, NMFS relies on a direct count of mortalities and serious injuries known within a standardized level of forensic evidence to be human caused. Because entanglement mortalities are less than 100 percent detectable, they may be considered undercounts. The assessment reported by Robbins and Matilla (2009) relies on a level of sampling (photographic evidence) of the population only rarely available and, as yet, unproven. In particular, their measure places considerable reliance on a small sample estimate of escapement based on NMFS evaluation of serious injury and mortality related to entanglements. The uncertainties of that estimate, its potential bias and the uncertainties of the overall estimate were not calculated. Until such time as NMFS can evaluate the nature of this estimate, including its variance properties and potential for long term use, we will continue to count mortality of humpback whales the same as for other baleen whales. As with many of our assessment findings, for large whales we are most interested in those tools that provide consistent long term results that allow for tracking of trends. The current accounting of deaths due to fisheries interactions, although likely an undercount, provides an evaluation consistent with NMFS' guidelines for preparing stock assessment reports.

*Comment 38:* The humpback whale stock assessment should mention habitat concerns. Proposed activities (e.g., increased herring harvest quotas, seismic surveys), if initiated, could result in an adverse impact on the prey base, cause the injury to whales, or displace them from key feeding areas.

*Response:* The habitat section of the SAR sufficiently describes activities within the humpback whale habitat that may be causing a decline or impeding recovery, and NMFS will continue to update this section as appropriate.

*Comment 39:* HSUS noted there were no data for minimum population estimates for harbor seals and gray seals that are the common subject of complaints by fisheries, and encouraged the northeast region to develop estimates. The Commission recommended that NMFS conduct the

necessary surveys of North Atlantic pinniped stocks and incorporate the results in their stock assessment reports.

*Response:* NMFS plans a harbor seal abundance survey, including a correction factor for seals not hauled out during the survey, in May 2011. Revised estimates should be incorporated into the 2012 SAR. Archived digital images from seasonal seal surveys from 2005 to 2011 along the southeast Massachusetts coast will be analyzed in 2011 to provide a minimum abundance estimate of non-pup gray seals in the Cape Cod/eastern Nantucket Sound region. This area contains the major gray seal haul-out sites in U.S. waters.

*Comment 40:* The Commission recommended that the NMFS develop a stock assessment plan for the Gulf of Mexico that describes: (1) A feasible strategy for assessing the Gulf's marine mammal stocks, (2) the infrastructure needed to support that plan, (3) the expertise required to carry out the plan, and (4) the funding needed to implement the plan.

*Response:* It would be valuable to develop a marine mammal stock assessment plan for the Gulf of Mexico that addresses feasibility, infrastructure needs, and resources required. However, the critical elements for a plan already exist in the protected species Stock Assessment Improvement Plan, and these elements are addressed in the Southeast Fisheries Science Center Marine Mammal Program Strategic Plan written in 2008, and a 2007 research plan for assessing bottlenose dolphin stocks in the north-central Gulf of Mexico. Because of limited staff resources there are no plans in the immediate future to develop a focused Southeast Fisheries Science Center document.

#### *Comments on Pacific Regional Reports*

*Comment 41:* In light of *Anderson v. Evans*, 371 F.3d 475, 497–401 (9th Cir. 2004), the MMPA applies to subsistence hunting of seals by Northwest Tribes, and the SAR should make clear that any direct harvesting of marine mammals by members of Northwest Tribes is not legal unless they first comply with the MMPA including obtaining the necessary waivers or permits prior to the hunt. The SAR should make a note that any tribal take would be illegal.

*Response:* The SAR includes all takes of marine mammals reported by Northwest Tribes. MMPA section 117(a) explicitly lists the information that should be included in SARs. This list does not include identifying which takes need to be authorized and which do not. Accordingly such language is inappropriate for SARs.

*Comment 42:* HSUS requests more discussion of what fisheries might be interacting with long-beaked common dolphins, given the number of stranded animals with gunshot evidence.

*Response:* The fisheries likely interacting with this stock that have historically taken animals from this stock, but which have been unobserved in recent years, are shown in Table 1 (California small mesh drift gillnet fishery and California halibut/white seabass set gillnet fishery).

*Comment 43:* Table 1 of the California/Oregon/Washington Humpback whale SAR lists 14 deaths and serious injuries of humpbacks over a five year period, which results in an annual average of 2.8 per year.

*Response:* Table 1 lists two deaths and 14 serious injuries (serious injuries are shown in parentheses and deaths are not), which results in an annual average of 3.2 whales per year. This matches the description in the text.

*Comment 44:* HSUS commented that inclusion of information on deaths to marine mammals during scientific research and on potential harm due to anthropogenic sound near Hawaii is appreciated. The inclusion of stock assessments for marine mammal stocks in U.S. territories in the Pacific is greatly appreciated, and efforts to update abundance estimates and data from genetic analyses for a number of other stocks, including Hawaiian Islands stocks, is also a welcome addition.

*Response:* NMFS acknowledges and thanks you for this comment.

*Comment 45:* PBR should not be calculated for most Hawaiian stocks, as the abundance estimates are more than 8 years old.

*Response:* The abundance information for Hawaiian stocks updated in the 2010 SARs have not yet exceeded eight years (based on a 2002 survey).

*Comment 46:* NMFS should amend the Hawaii pantropical spotted dolphin report to describe the troll and charter boat fisheries and the practice of “fishing” dolphins, note the existence of anecdotal reports of bycatch, and indicate need to collect more data on potential bycatch by these fisheries.

*Response:* Acknowledgement of anecdotal reports of bycatch of spotted dolphins by the Hawaii troll fishery have been included in the text. The potential for hooking other dolphins noted by Rizutto (2007) by the commercial and recreational troll fishery has also been noted in the SARs for bottlenose dolphins, rough-toothed dolphins, and short-finned pilot whales.

*Comment 47:* New evidence indicates the presence of two stocks of melon-

headed whale in nearshore Hawaiian waters and multiple populations of short-finned pilot whales in the Hawaiian EEZ.

*Response:* This new information, available after the 2010 SARs were drafted, will be evaluated and included in the next update to the Hawaii melon-headed whale and short-finned pilot whale SARs.

*Comment 48:* NMFS should note additional information of occurrence of pygmy killer whales in the main Hawaiian Islands and evidence of fisheries interactions.

*Response:* This is noted in the text.

*Comment 49:* The draft 2010 SAR for common bottlenose dolphins—Hawaii Island stock indicates that “there is no systematic monitoring of gillnet fisheries that may take this species.” This should be expanded to include other types of fisheries that may also interact with the stock.

*Response:* NMFS agrees, and a note has been made in the SAR of other fisheries that may interact with the Hawaii Islands stock of bottlenose dolphins.

*Comment 50:* The statement that sightings of Hawaiian striped dolphins have historically been infrequent is no longer accurate. Recent surveys in deep water areas have documented this species fairly regularly.

*Response:* New information about the frequent occurrence of striped dolphins off Hawaii was not available when the 2010 SAR was drafted. Occurrence and range information for this species will be updated during the next update for this SAR.

*Comment 51:* Unpublished reports indicate high re-sighting rates of dwarf sperm whales off the island of Hawaii, suggesting small population size and site-fidelity. Individuals have also been documented with dorsal fin disfigurements.

*Response:* NMFS typically cites only peer-reviewed information in the SARs. The information referenced here was not available for review prior to drafting the 2010 SAR and may be evaluated for the next review of this stock.

*Comment 52:* NMFS continues to divide the Eastern North Pacific false killer whale stock into three fictional stocks based on the U.S. EEZ boundaries, and has inappropriately extrapolated from a single outdated false killer whale sighting to establish a population abundance estimate for the Hawaii pelagic population that severely underestimates total population size.

*Response:* NMFS has previously responded to this and related comments (see 73 FR 21111, April 18, 2008, comment 47; 74 FR 19530, April 29,

2009, comment 34; and 75 FR 12504, March 16, 2010, comment 53) and reiterates that the stock division for false killer whale is consistent with the MMPA and with the NMFS 2005 Guidelines for Assessing Marine Mammals Stocks (GAMMS), which were finalized after opportunity for public review and comment, and provide guidance on abundance and PBR of transboundary stocks. No international agreements presently exist for the management of cetacean bycatch in the central Pacific longline fisheries; therefore, NMFS assesses the status of marine mammal stocks within U.S. EEZ waters, based on EEZ abundances and EEZ mortalities and serious injuries. Further, as noted in GAMMS, the lack of genetic difference among false killer whale samples from the broader eastern North Pacific region does not imply that these animals are from a single eastern North Pacific stock.

*Comment 53:* The NMFS abundance estimate for the Pelagic stock of Hawaiian false killer whales is outdated and incorrect, as the abundance estimate from the 2002 survey became “stale” in the fall of 2010. In addition, a new survey begun in August 2010 has observed numerous groups of false killer whales. This survey’s observations should be considered the best available information regardless of whether a new abundance estimate has been calculated.

*Response:* The abundance information for Hawaii pelagic false killer whales presented in the 2010 SAR is now 8 years old (based on a 2002 survey). New information from the 2010 survey was available after the preparation of 2010 or 2011 SARs (reports are prepared in the summer and fall for review by the SRG) but will be assessed for inclusion in future SARs.

*Comment 54:* NMFS has incorrectly represented that the Hawaii “insular” stock “may have declined.” This suggestion is based on several speculative and scientifically unproven assertions regarding the supposed historical abundance of the Insular Stock and the assumed effects of the fisheries on that stock.

*Response:* NMFS has previously responded to a similar comment (see 75 FR 12505, March 16, 2010, comment 57) and reiterates the scientific information supporting the decline has been peer-reviewed and clearly outlines the data and basis for their conclusions. In the SAR, there is no assignment of cause of this decline within the SAR, and fisheries have not been implicated at this time.

*Comment 55:* The SAR wrongly assigns a deep-set fishery false killer whale interaction to the insular stock.

The best available scientific information does not demonstrate that the deep-set fishery has ever interacted with an animal from the insular stock.

*Response:* The boundaries of the insular stock have been determined based on genetic and movement data and have been peer-reviewed by the Pacific SRG. Unless specific stock identity is known (*e.g.*, from a genetic sample of the affected animal) any longline fishery interaction occurring within the overlap zone between the insular and pelagic stocks will be prorated to the two stocks so potential impact on each stock can be accounted for. In the 2010 SAR, this proration is based on the relative density of the insular versus pelagic stock throughout the stock range. This methodology will be reevaluated in the near future, and future SARs may reflect alternative proration strategies.

*Comment 56:* NMFS arbitrarily picks and chooses which information to use to support conclusions published in the false killer whale SAR. Unpublished reports and papers, "working" papers, "draft" papers, non-peer reviewed papers, and reports containing "preliminary estimates" are used in support of certain aspects of the SAR, while others are ignored if their findings contradict other conclusions within the SAR.

*Response:* NMFS does cite key unpublished papers and/or reports in the SARs if (1) they are reviewed and accepted by the SRG at their annual meeting, or (2) NMFS expects that they will be finalized and published (with peer-review) by the time the SAR is finalized. If not published, papers and/or reports that are reviewed and accepted by the SRG are considered peer reviewed and best available science.

*Comment 57:* The 2010 draft humpback SAR includes a single 2006 interaction with the Hawaii-based shallow-set fishery in its mortality and serious injury estimates for both the northern portion and southeast Alaska portion of the Central North Pacific humpback whale stock. This interaction should not be double-counted.

*Response:* See responses to comments 13 and 14 in the final 2005 LOF (71 FR 247, January 4, 2006), comment 10 in the final 2003 LOF (68 FR 41725, July 15, 2003), comment 10 in the final 2008 LOF (72 FR 66048, November 27, 2007), and comment 18 in the final 2009 SARs (75 FR 12498, March 16, 2010) for detailed responses to a similar comment. Where there is considerable uncertainty regarding to which stock a serious injury or mortality should be assigned, NMFS exercises a

conservative approach of assigning the serious injury or mortality to both stocks. Clearly, if information were available regarding the location of take, genetics of the taken animal, or other conclusive information linking the serious injury or mortality to a specific stock, NMFS would use it to assign the take to a specific stock.

Dated: June 6, 2011.

**Helen M. Golde,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

RIN 0648-XA477

#### Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 25 Review Workshop for South Atlantic black sea bass (*Centropristis striata*) and golden tilefish (*Lopholatilus chamaeleonticeps*).

**SUMMARY:** The SEDAR 25 Review of the South Atlantic stock of black sea bass and golden tilefish will consist of one workshop, held September 20-22, 2011. This is the twenty-fifth SEDAR.

**DATES:** The SEDAR 25 Review Workshop will take place September 20-22, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The SEDAR 25 Review Workshop will be held at the Crowne Plaza, 4831 Tanger Outlet Boulevard, North Charleston, SC 29418; *telephone:* 843-740-7028.

**FOR FURTHER INFORMATION CONTACT:** Kari Fenske, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571-4366; *kari.fenske@safmc.net.*

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes

three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Consensus Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Panelists for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. SEDAR participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

#### SEDAR 25 Review Workshop Schedule September 20-22, 2011; SEDAR 25 Review Workshop

September 20, 2011: 9 a.m.-8 p.m.;  
September 21, 2011: 8 a.m.-8 p.m.;  
September 22, 2011: 8 a.m.-1 p.m.

The Review Workshop is an independent peer review of the assessment developed during the Data and Assessment Workshops. Workshop Panelists will review the assessment and document their comments and recommendations in a Consensus Summary.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.