

and management of Atlantic bluefin tuna and other HMS. Section 971i(b) requires that the comprehensive research and monitoring program for HMS shall provide for, but not be limited to, the following:

1. Statistically designed cooperative tagging studies;
2. Genetic and biochemical stock analyses;
3. Population censuses carried out through aerial surveys of fishing grounds and known migration areas;
4. Adequate observer coverage and port sampling of commercial and recreational fishing activity;
5. Collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landings reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;
6. Studies of the life history parameters of bluefin tuna and other highly migratory species;
7. Integration of data from all sources and the preparation of data bases to support management decisions; and
8. Other research as necessary.

Comments and Responses

Research Priorities

Comment: The final plan should clearly outline research priorities, rather than provide a compendium of possibilities for future research activities. There should be a strong emphasis on submitting the results to peer reviewed journals.

Response: NMFS agrees. The final plan has been restructured to include a section on priorities. This approach should provide a better context for the description of HMS research activities that follows. NMFS will continue to submit the findings of research projects that are conducted or sponsored by the agency to a vigorous peer review process in the appropriate forum.

Funding for Research

Comment: The plan should include a section with a time line that establishes a schedule for accomplishing this research. The document should also outline how the agency anticipates funding the research plan.

Response: These are not required elements of the plan, pursuant to ATCA section 971i(b). NMFS is unable to predict future funding for these projects since the appropriation process is revisited annually by Congress and many HMS research initiatives are dependent upon international cooperation and funding. Therefore,

funding levels and future dates of completion for the projects outlined in this plan have not been identified.

Request for Proposals

Comment: NMFS should initiate a Request for Proposals (RFP) as a means of publicizing and undertaking the research in this comprehensive plan. The RFP should indicate the amount of funding available for these projects.

Response: NMFS has been unable to issue an RFP due to insufficient discretionary funding. This year's funding is largely dedicated to previous commitments to multi-year projects and implementation of the Magnuson-Stevens Act.

Data Collection in Commercial and Recreational Fisheries

Comment: NMFS should strengthen its data collection methodology to ensure that comparable data are collected for commercial and recreational fisheries, as required by ATCA.

Response: NMFS is aware that ATCA requires the collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landings reports for charter operations and fishing tournaments, and programs to provide reliable reporting of catch by private anglers. Existing regulations, as well as the draft Fishery Management Plan for Atlantic Highly Migratory Species (HMS FMP) and the draft Amendment to the Fishery Management Plan for Atlantic Billfishes (Billfish FMP), contain specific proposed management measures to address this legal requirement. NMFS is committed to strengthening and improving the collection of data in all HMS fisheries as an integral part of a comprehensive program for research and monitoring.

Comment: The Plan should include a more thorough discussion of the Marine Recreational Fisheries Statistical Survey and the Large Pelagic Survey that explains the parameters of these surveys, including sample size and calibration.

Response: NMFS does not consider this level of detail to be an appropriate part of the Plan. The draft HMS FMP provides more details relative to these surveys of the recreational HMS fisheries.

Studies of Life Histories

Comment: The draft plan does not contain enough detail on how NMFS intends to collect information on Essential Fish Habitat, pursuant to requirements of the Magnuson-Stevens

Fishery Conservation and Management Act.

Response: The draft HMS FMP and the draft Amendment to the Billfish FMP each contain a substantial discussion of information needs relative to Essential Fish Habitat for species covered by the Plan. Development of these draft documents has included extensive involvement from the Advisory Panels and the public. Therefore, while this information is indeed relevant to the life histories of HMS, a complete discussion of Essential Fish Habitat data needs is not repeated in the ATCA plan.

Socioeconomic Studies

Comment: NMFS should study the socioeconomic consequences of proposed management measures for HMS fisheries, including limited access.

Response: A number of socioeconomic research projects relative to HMS were conducted in 1997 and 1998 with funding from NMFS, as mentioned in the Plan. Numerous social and economic analyses have also been conducted in conjunction with the preparation of the draft HMS FMP and the draft Amendment to the Billfish FMP. NMFS agrees that socioeconomic studies are an essential part of a comprehensive research program for HMS.

Authority: 16 U.S.C. 971 *et seq.*

Dated: October 22, 1998.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102198A]

Small Takes of Marine Mammals Incidental to Specified Activities

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

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the Washington State Department of Corrections (WDOC) for authorization to take small numbers of harbor seals by harassment incidental to the nonexplosive demolition of the Still Harbor Dock Facility on McNeil Island

in southern Puget Sound. Under section 101(a)(5)(D) of the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the WDOC to incidentally take by harassment a small number of harbor seals in the vicinity of Gertrude Island for a period of 1 year, provided certain mitigation measures are incorporated into the project.

DATES: Comments and information must be received no later than November 30, 1998.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3225. A copy of the application, and a 1994 environmental assessment, which includes a list of references used in this document, may be obtained by writing to this address or by telephoning one of the contacts listed in **FOR FURTHER INFORMATION CONTACT** section.

The Washington State Final Environmental Impact Statement (FEIS) and other documents are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, Rm 13600, 1315 East-West Highway, Silver Spring, MD 20910, and Northwest Region, NMFS, Bldg 1, 7600 Sand Point Way, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713-2055, or Brent Norberg, Northwest Regional Office, NMFS, (206) 526-6733.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) or will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such taking are set forth. NMFS has defined

“negligible impact” in 50 CFR 216.103 as “...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.”

Subsection 101(a)(5)(D) of the Marine Mammal Protection Act established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines “harassment” as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Background of Request

On September 18, 1998, NMFS received an application from the WDOC requesting an authorization for the possible harassment of small numbers of harbor seals incidental to work involved in the removal and replacement of the Still Harbor Dock Facility (Dock Facility), a foul weather landing facility for the McNeil Island Corrections Center, McNeil Island, WA. (The Quitclaim Deed, which transferred the property from Federal to state control, limits the use of the Still Harbor Dock to emergency situations because of the Gertrude Island harbor seal population). Significant deterioration of the existing facility, including the collapse on May 24, 1994, of the steel-pile-supported concrete center portion of the facility, has resulted in the need for major renovation in order to maintain a safe, functional facility.

On January 23, 1995, the WDOC was issued an Incidental Harassment Authorization (IHA) under section 101(a)(5)(D) of the MMPA for this project (see 60 FR 7046, February 6, 1995). However, removal of the Dock Facility was not completed; the IHA expired one year after authorization; and a renewal was not requested since that time.

The renovation will include demolition of the existing facility; construction of a new pile-supported concrete access trestle approximately 350 ft (107 m) long by 10 ft (3.0 m) wide, a new 50 ft (15.2 m) long by 5 ft (1.5 m) wide aluminum gangway, seven new 10 ft (3.0 m) wide and 50 ft (15.2 m) long and one new 14 ft (4.3 m) wide and 60 ft (18.3 m) long concrete floats; and 60 steel pipe and prestressed concrete piles. All new structures will be constructed within the footprint of the existing facility. The new dock will be significantly smaller than planned in 1994 (8,000 ft² v. 20,000 ft²). Additional information on the dock facility and the Corrections Center in general can be obtained by referring to the FEIS published by the WDOC in 1989 in compliance with the State Environmental Policy Act of 1971 (Chapter 43.21C, Revised Code of Washington). This document and the 1998 Addendum are available for viewing (see **ADDRESSES**).

In an effort to minimize noise from these activities, no explosives will be used for demolition. The dock removal and construction schedules were developed to avoid reproductively sensitive life history periods of several species of wildlife, including harbor seals. The demolition and pile-driving activities are anticipated to be completed in one season's specified work window from December 1998 or January 1999, through March 15, or April 1, 1999. Above-water work is scheduled to continue through to the end of August 1999.

Alternatives to the Proposed Action

No alternative options for the foul weather dock and moorage have been identified by the WDOC for McNeil Island. Without the availability of the foul weather dock, prisoners, visitors, staff and supplies would be unable to land on the island until the weather cleared. In addition, management of McNeil Island by the State as a wildlife preserve and sanctuary prohibits any new road construction for an alternative dock location under the Wildlife Restriction terms in the Quitclaim Deed of the property.

Harbor seals

The harbor seal (*Phoca vitulina*) is the only marine mammal species anticipated to be taken by the demolition of the Dock Facility (although a few California sea lions may also be harassed). Gertrude Island is a low-tide haulout, and rookery used by harbor seals of various ages. The southern part of the island is located approximately 1,100 ft (305 m) from the

Dock Facility. The type of taking anticipated will be incidental harassment caused by the noise of demolition work, pile driving, and construction. It is anticipated that the seals may be disturbed upon initiation of activities on a daily basis until they become acclimated to the activity. The number of seals disturbed will vary with tidal elevation at the time of initiation of the activity.

Harbor seals are the most abundant pinniped in Washington State. Since passage of the MMPA in 1972, harbor seal populations in the inland waters of Washington have increased significantly. From 1983 to 1992, the Washington inland waters stock of harbor seals increased at an annual rate of 6.1 percent (NMFS, 1994; Huber *et al.*, in prep.). Boveng (1988) and NMFS (1991) estimated the minimum harbor seal population for the state's inland waters to be 6,062. More recently, Barlow *et al.* (1997) estimate the inland population at 16,253, giving it a minimum population size estimate of 15,349. South Puget Sound pup counts are presently increasing at an annual rate of 15.3% from 365 total (25 pups) in 1984 to 706 total (78 pups) in 1992 (NMFS data). Harbor seals occupy all nearshore areas of Puget Sound, including McNeil and Gertrude Islands, throughout the year. Based on data from the Washington Department of Fish and Wildlife (WDFW) and NMFS on Gertrude Island, total seal counts between 1988 and 1993 indicate the peak use in September and the lowest use in February. The most current data on maximum numbers of harbor seals using the Gertrude Island haulout during the demolition work window vary from 215 to 634, depending on the month (NMFS data). Seasonal increases at Gertrude Island have been ascribed to the onset of pupping and molting seasons and to a movement of seals from other haulout sites as disturbances increase during the summer (Jones and Stokes, 1989). The pupping season for the Gertrude Island herd extends from late July to late September, and the molting season extends from early October to early December (Newby, 1971; Skidmore and Babson, 1981).

The impact to the harbor seals would be disturbance by noise which is anticipated to result in a negligible short-term impact to a small number of harbor seals. When harbor seals are frightened by noise or by the approach of a boat, plane, human, or other potential predator, the seals will move rapidly to the relative safety of the water. Depending upon the severity of the disturbance, seals may return to the

original haulout site immediately, stay in the water for some length of time before hauling out, or haul out in a different area (Johnson, 1977; Skidmore and Babson, 1981). These short term disturbances and site reoccupation were confirmed by observations conducted during the first phase of the project (WDOC, 1997). Disturbances tend to have a more serious effect when herds are pupping or nursing, when aggregations are dense, and during the molting season (Jones and Stokes, 1989).

Short-term impact of the activities is expected to result in a temporary reduction in utilization of the haulout while work is in progress or until the seals acclimate to the disturbance. The specific activities will not result in any reduction in the number of seals, and they are expected to continue to occupy the same area of Gertrude Island. The abandonment of Gertrude Island as a harbor seal haulout and rookery is not anticipated due to the existing level of human activity on and around the dock for over 50 years (Jones and Stokes, 1989). Human activity increases annually in the late fall and winter months when the use of the dock facility serving as a foul weather moorage for WDOC passenger ferries, barges, tugboats, and patrol boats increases.

In addition, the activities are anticipated to have no long-term impact on the habitat of harbor seals. No direct physical impact to the habitat will occur due to the dock reconstruction as all new facilities will occur within the footprint of the original structure. Mitigation measures (discussed here) under an MMPA IHA are expected to reduce any impacts to a negligible level.

Mitigation

Efforts to ensure negligible impact of the dock renovation project on harbor seals identified by the WDOC and proposed for inclusion in the IHA include:

1. A December 1–July 15 (or whenever newborn pups are first observed on Gertrude Island) work schedule for those activities that are predicted to disturb harbor seals in order to avoid adversely affecting harbor seals during the pupping and nursing season (July 15 to October 15);

2. A 1,000-ft (305 m) no-entry buffer zone around Gertrude Island to minimize the impact of vessel traffic on harbor seals during the project (the buffer zone will be marked by floats);

3. Construction activities and seal behavior will be monitored by marine biologists to ensure that impacts on seals will be minimal;

4. The demolition will not utilize any explosives;

5. The removal of material and debris will be in the largest sizes possible, and the removed materials will be transported off site for disposal; and

6. To mitigate noise levels and, thereby, impacts to harbor seals, all construction equipment should comply as much as possible with applicable equipment noise standards of the U.S. Environmental Protection Agency (EPA, 1974), and all construction equipment should have noise control devices (e.g., mufflers) no less effective than those provided on the original equipment.

Monitoring

The Gertrude Island haulout has been the site of several research projects for a number of years. Current research efforts by NMFS and WDFW include a radio tag study to learn about feeding behavior of the seals. A cooperative monitoring program by NMFS and WDFW is under discussion; alternatively, WDOC may contract with a private contractor to monitor activities. In addition, NMFS proposes to require WDOC to notify NMFS and the WDFW prior to work in order to coordinate the monitoring of potential disturbances to seals.

Proposed Authorization

NMFS proposes to issue an incidental harassment authorization for 1 year for the demolition of the collapsed portion of the Dock Facility located on McNeil Island in the State of Washington, provided the above mentioned mitigation measures and reporting requirements are incorporated. NMFS has preliminarily determined that the demolition of the Dock Facility would result in the harassment taking of only a small number of harbor seals and possibly California sea lions, would have a negligible impact on the harbor seal and California sea lion stocks and would not have an adverse impact on the availability of these stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request.

Dated: October 23, 1998.

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National Marine Fisheries Service.*

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