

Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA- 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 642–1536–00 authorizes the permit holder to conduct aerial and vessel-based research, including surface and underwater photography/videography for fluke identification and sex verification, on North Pacific humpback whales (*Megaptera novaeangliae*) and several other species of cetaceans in Hawaii waters. The permit holder now requests authorization to add biopsy sampling and suction cup/implantable bioacoustic tagging of various marine mammal species resident to Hawaii, including humpback whales, fin whales (*Balaenoptera physalus*), sei whales (*Balaenoptera borealis*), Bryde's whales (*Balaenoptera edeni*), killer whales (*Orcinus orca*), short-finned pilot whales (*Globicephala macrorhynchus*), melon-headed whales (*Peponocephala electra*), false killer whales (*Pseudorca crassidens*), spinner dolphins (*Stenella longirostris*), spotted dolphins (*Stenella attenuata*), striped dolphins (*Stenella coeruleoalba*), Risso's dolphins (*Grampus griseus*), rough-toothed dolphins (*Steno bredanensis*), bottlenose dolphins (*Tursiops truncatus*), sperm whales (*Physeter macrocephalus*), pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), Baird's beaked whale (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), and Blainville's beaked whales (*Mesoplodon densirostris*). Specifically, the permit holder is requesting 40 tagging takes and 80 biopsy takes for humpback whales, 5 tagging takes and 10 biopsy takes for fin, sei, Bryde's, and killer whales, and 20 tagging takes and 40 biopsy takes for all other requested species. Biopsy sampling is requested to further study the population structure of the above species. Bioacoustic tagging is requested to record and quantify the various acoustic stimuli in the animals' environment, with a primary objective of tagging singing humpback whale males to further understand song structure and duration. The proposed research is requested for the duration of the current permit which expires on May 31, 2005. All research will take place in Hawaiian waters.

NOAA environmental review procedures provide that scientific research permits are generally categorically excluded from the National Environmental Policy Act of

1969 (NEPA; 42 U.S.C. 4321 *et seq.*) requirements to prepare an environmental assessment (EA) or environmental impact statement. However, given that portions of the research are directed at species listed as threatened or endangered under the ESA, NMFS is currently preparing an EA to determine if the proposed activities are likely to result in any significant impacts to social, economic, biological or physical environment resources.

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

Dated: December 30, 2003.

Tammy C. Adams,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122303K]

Marine Mammals; Photography Permit File No. 1061–1738

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Joanne Lunt, Wag TV, 2d Leroy House, 436 Essex Road, London N1 3QP, England [Principal Investigator: Joanne Lunt] has applied in due form for a permit to take Northern elephant seals (*Mirounga angustirostris*) for purposes of commercial/educational photography.

DATES: Written or telefaxed comments must be received on or before February 5, 2004.

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

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Jennifer Jefferies (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of section 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) of the MMPA provides for photography for educational or commercial purposes involving marine mammals in the wild not listed as endangered or threatened. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a “pilot” application for Level B Harassment of non-listed marine mammals for photographic purposes.

The applicant specifically proposes to take by harassment up to 200 northern elephant seals during land-based filming activities. The purpose of the proposed project is to collect footage of mating behavior and also document permitted scientists conducting research on northern elephant seals. The footage will be used to produce a documentary on the evolution of sexual behavior that will be broadcast on Discovery Channel US and Channel 4 UK. Filming activities will take place in Point Reyes or Ano Nuevo, California. The Permit would be valid 1 year after the date of issuance with filming currently scheduled to take place during February 2004.

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

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile to (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**,

NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 30, 2003.

Tammy C. Adams,

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

[FR Doc. 04-230 Filed 1-5-04; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

In the Matter of Intermarket Clearing Corporation—Request for Vacation From Designation as Derivatives Clearing Organization

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to a request by the Intermarket Clearing Corporation (“ICC”), the Commodity Futures Trading Commission (“Commission” or “CFTC”) is issuing an order vacating ICC’s designation as a Derivatives Clearing Organization (“DCO”).

EFFECTIVE DATE: December 31, 2003.

FOR FURTHER INFORMATION CONTACT: R. Trabue Bland, Attorney, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5430. E-mail: tbland@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Section 5b(d) of the Commodity Exchange Act¹ (“Act”) provides that DCOs that clear contracts for boards of trade designated by the Commission as contract markets prior to a certain date are deemed registered with the Commission. Under Section 1a(29)(C) of the Act, registered DCOs are “registered entities.” Section 7 of the Act² provides that “any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration

shall take effect.” ICC has requested that the vacation of this registration take place before the expiration of the ninety-day period. In response to the request, the Commission is exempting ICC from the notice requirements of Section 7 of the Act pursuant to Section 4(c) of the Act,³ which gives the Commission broad exemptive authority, and then vacating ICC’s registration.

II. Request for Vacation of Registration

A. Background

By letter to the Division of Clearing Intermediary Oversight, the ICC submitted a request for the vacation of registration.⁴ The ICC is a registered DCO under Section 5b(d) of the Act and thus a registered entity as defined in Section 1a(29)(C) of the Act. The ICC is a wholly owned subsidiary of The Options Clearing Corporation (“OCC”), another registered DCO. For the past several years, ICC has not engaged in any clearing activities, and thus the OCC wishes to merge the ICC into the OCC. At the completion of the merger, ICC will cease to exist as a corporate entity. Therefore, the ICC requests that the Commission vacate the registration of ICC as a DCO.

Section 7 of the Act allows “any person that has been designated or registered as a registered entity in the manner herein provided may have such designation or registration vacated and set aside by giving notice to the Commission requesting that its designation or registration as a registered entity be vacated, which notice shall be served at least ninety days prior to the date named therein as the date when vacation of designation or registration shall take effect.” ICC served notice to the Commission on November 17, 2003. However, the merger of ICC and OCC will take place before the end of the calendar year 2003, which will occur before the expiration of the ninety-day notice period required by Section 7 of the Act. Therefore, ICC requests, pursuant to Section 4(c) of the Act, that the Commission exempt ICC from Section 7’s ninety-day notice requirement. On December 18, 2003, the Commission published a proposed order and invited comment on ICC’s request.⁵ The Commission received no comments.

³ 7 U.S.C. 6c (2003).

⁴ The letter, dated November 17, 2003, was sent to John Lawton, Deputy Director and Chief Counsel of the Division of Clearing and Intermediary Oversight.

⁵ 68 FR 79494 (December 18, 2003).

B. Public Interest Considerations

The Commission is waiving the Section 7 ninety-day notice requirement pursuant to section 4(c) of the Act, which grants the Commission broad exemptive authority. Section 4(c) of the Act provides that, in order to promote responsible economic or financial innovation and fair competition, the Commission “may, by rule, regulation or order, exempt any class of agreements, contracts or transactions, including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction, from the contract market designation requirement of Section 4(a) of the Act, or any other provision of the Act * * * if the Commission determines that the exemption would be consistent with the public interest.”⁶

As explained above, the ICC has not operated as a clearing entity in a number of years. The merger of ICC into OCC will allow the OCC to streamline its operations. The Commission believes that exempting ICC from the ninety-day requirement of section 7 is consistent with the public interest, is consistent with the purposes of the Act and would have no adverse effect on the ability of OCC to fulfill its self-regulatory responsibilities imposed by the Act.

The Commission invited comments specifically on exempting ICC from the ninety-day requirement of section 7 and received no comments.

III. Conclusion

After consideration of the ICC request, the Commission has determined to exempt ICC from the ninety-day notice requirement of section 7 of the Act. Furthermore, the Commission is vacating the Intermarket Clearing Corporation’s registration as a derivatives clearing organization upon completion of the merger between ICC and OCC.

IV. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation or order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a new order or to determine whether the benefits of the order outweigh its costs. Rather, section 15(a) simply requires the Commission to “consider the costs and benefits” of its action.”

⁶ See, e.g., 65 FR 77993 (December 13, 2000) (adopting final rules pursuant to the 4(c) exemption).

¹ U.S.C. 7a-1(2003).

² U.S.C. 11 (2003).