

description of the limit for Tribal Resource Management Plans (§ 223.209) so that the text would appear next to the 4(d) rule in the Code of Federal Regulations, improving the clarity of the 4(d) regulations; and Amend the current 4(d) rule so that the section 9(a) take prohibitions apply to anadromous fish with an intact adipose fin only (that is, the take prohibitions and 4(d) protective regulations would not apply to unclipped hatchery fish or resident O. mykiss included in the subject ESUs).

Because the proposed action creates an optional ESA process, the effects that it may generate are limited to those associated with amending the 4(d) protective regulations. The proposed action does not address the potential effects of individual activities or programs that may seek coverage under one of the 4(d) "limits." It is impossible to anticipate the specific impacts of such programs that may be submitted to and approved by NMFS. NMFS will conduct further NEPA analyses as necessary when a specific program is submitted to NMFS for coverage under one of the 4(d) limits for West Coast salmonids.

This notice is provided pursuant to the NEPA regulations (40 CFR 1506.6). The final NEPA determinations will not be completed until after the end of the 30-day comment period and after NMFS has fully considered all comments received during the public comment period.

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

Dated: November 9, 2004.

Laurie K. Allen,

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

[FR Doc. 04-25313 Filed 11-12-04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 102704]

Taking and Importing of Marine Mammals

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

ACTION: Notice of affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) renewed the affirmative finding for the Republic of Ecuador under the Marine Mammal Protection

Act (MMPA). This affirmative finding renewal will allow yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP), in compliance with the International Dolphin Conservation Program (IDCP) by Ecuadorian-flag purse seine vessels or vessels operating under Ecuadorian jurisdiction, to continue to be imported into the United States. The affirmative finding renewal was based on review of documentary evidence submitted by the Republic of Ecuador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the Department of State. This finding remains in effect through March 31, 2005.

DATES: Effective April 1, 2004, through March 31, 2005.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802-4213; Phone 562-980-4000; Fax 562-980-4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. Under implementing regulations at 50 CFR 216.24, a nation with purse seine vessels greater than 400 short tons (362.8 metric tons) carrying capacity fishing for tuna in the ETP must have an affirmative finding in order to export such tuna and tuna products to the United States. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State. The finding will be reviewed annually to ensure that the nation continues to meet the requirements for an affirmative finding. The requirements must be met in order for the finding to remain valid for the following 12-month period: April 1 through March 31, or for such other period as the Assistant Administrator may determine.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. A nation may opt to provide information regarding compliance with the IDCP directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when

NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator.

As a part of the annual review process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of Ecuador and obtained from the IATTC and the Department of State and determined that Ecuador has met the MMPA's requirements to receive an affirmative finding.

After consultation with the Department of State, NMFS renewed the Republic of Ecuador's affirmative finding allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Ecuadorian-flag purse seine vessels or vessels operating under Ecuadorian jurisdiction.

The Republic of Ecuador must submit a new application no later than January 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and the subsequent 4 years.

Dated: November 9, 2004.

Rebecca Lent,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101304E]

Issuance of Permit 1493

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

ACTION: Notice of decision and availability of decision documents on the issuance of ESA research/

enhancement permit 1493 for takes of endangered species.

SUMMARY: This notice advises the public that a scientific research permit to the Bonneville Power Administration (BPA) and the Confederated Tribes and Bands of the Yakama Nation, as their agent, pursuant to the Endangered Species Act of 1973 (ESA), has been issued and that the decision documents are available upon request.

DATES: Permit 1493 was issued on September 15, 2004, subject to certain conditions set forth therein. The permit expires on September 15, 2009.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Salmon Recovery Division, NOAA Fisheries, 525 NE Oregon Street, Suite 510, Portland, Oregon 97232. The documents are also available on the Internet at www.nwr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, OR, at phone number: (503) 230-5409, e-mail: Kristine.Petersen@noaa.gov

SUPPLEMENTARY INFORMATION: The following species and evolutionarily significant units (ESUs) are covered in the permit:

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring run.

Issuance of this permit, as required by the ESA, was based on a finding that such permits: (1) were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of the permits; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA. This permit was issued in accordance with, and is subject to, 50 CFR part 222, the NMFS regulations governing listed species permits.

Dated: November 9, 2004.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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COMMODITY FUTURES TRADING COMMISSION

In the Matter of the Intercontinental Exchange, Inc. Petition for Expansion of the Definition of an Eligible Commercial Entity Under Section 1a(11)(C) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: In response to a petition from the Intercontinental Exchange, Inc. ("Intercontinental"), the Commodity Futures Trading Commission ("Commission" or "CFTC"), pursuant to section 1a(11)(C) of the Commodity Exchange Act ("Act"), is issuing an order that deems, subject to certain conditions, brokers and traders associated with the International Petroleum Exchange ("IPE"), a recognized investment exchange ("RIE") located in the United Kingdom ("U.K."), who are either authorized by the Financial Services Authority ("FSA") or registered with the IPE,¹ when acting in a proprietary trading capacity, to be an "eligible commercial entity" as defined in section 1a(11) of the Act.² Accordingly, subject to certain conditions as set forth in the Commission's order, IPE members authorized as commodity brokers by FSA or registered as local traders with IPE, when acting for their own accounts, are permitted to enter into transactions in exempt commodities on exempt commercial markets pursuant to section 2(h)(3) of the Act. In order to participate, the FSA-authorized broker or IPE-registered trader must either be an eligible contract participant, as that term is defined in section 1a(12) of the Act, or have its trades on the exempt commercial market guaranteed by a clearing member that is both a member of an FSA-recognized derivatives clearing organization and is an eligible contract participant.

¹ Registration with IPE is not registration with FSA or any other government entity. Criteria and procedures for obtaining membership or trading privileges on IPE are discussed below.

² The Commission previously determined to expand ECE eligibility to include, subject to certain conditions, Commission-registered floor brokers and floor traders. See 68 FR 2319 (January 16, 2003). That action applied to Commission-registered floor brokers and floor traders conducting business on electronic or open outcry markets. Similarly, this action applies to IPE brokers and local traders conducting business on IPE in either electronic or open outcry trading environments. As used in this Federal Register notice and in the prior Federal Register notice, the term proprietary trading means trading for one's own account.

EFFECTIVE DATE: This order is effective November 15, 2004.

FOR FURTHER INFORMATION CONTACT: Clarence Sanders, Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418-5068. Electronic mail: csanders@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

The Commodity Futures Modernization Act of 2000 ("CFMA"), Public Law No. 106-554, was signed into law on December 21, 2000. Under amendments implemented by the CFMA, section 2(h)(3) of the Act authorizes trading in an "exempt commodity"³ on an exempt commercial market ("ECM") meeting the requirements of section 2(h)(3)-(5). Under those provisions, transactions between an eligible commercial entity ("ECE") in an exempt commodity on an ECM are exempt from all but certain limited requirements of the Act.⁴

Section 1a(11) of the Act lists those eligible contract participants ("ECP")⁵

³ Section 1a(14) of the Act defines the term "exempt commodity" to mean a commodity that is not an excluded commodity or an agricultural commodity. Section 1a(13) defines the term "excluded commodity" to mean, among other things, an interest rate, exchange rate, currency, credit risk or measure, debt instrument, measure of inflation, or other macroeconomic index or measure. Although the term "agricultural commodity" is not defined in the Act, section 1a(4) enumerates a non-exclusive list of several agricultural-based commodities and products. The broadest type of commodities that fall into the exempt category are energy and metals products.

⁴ Under section 2(h)(3), ECMs are markets that meet the requirements of section 2(h)(3)-(5) by notifying the Commission of their intention to operate a trading facility in reliance on the exemption and by limiting themselves to transactions: (1) In exempt commodities, (2) entered into on a principal-to-principal basis by ECEs, and (3) executed or traded on an electronic trading facility. An ECM is not a registered entity, but is required to notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in section 2(h)(3). The notification of operation as an ECM must include several certifications and, pursuant to Commission regulation 36.3(c)(3), a representation that it will require each participant to comply with all applicable law and that it has a reasonable basis for believing that authorized participants are ECEs. Section 2(h)(4) reserves, with respect to transactions eligible for the 2(h)(3) exemption, certain provisions of the Act, including certain anti-fraud and anti-manipulation provisions.

⁵ Section 1a(12) lists those entities and individuals included within the ECP category. Included generally as ECPs are financial institutions; insurance companies; and investment companies subject to regulation; commodity pools and employee benefit plans subject to regulation and asset requirements; other entities subject to asset requirements or whose obligations are guaranteed by an ECP that meets a net worth requirement; governmental entities; brokers,