

**Authority:** 16 U.S.C. 1801 *et seq.*

**Dated:** November 12, 2004.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*  
[FR Doc. E4-3204 Filed 11-17-04; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 110904G]

#### Endangered and Threatened Species; Take of Anadromous Fish

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

**ACTION:** Application for scientific research permit 1511.

**SUMMARY:** Notice is hereby given that NMFS has received a scientific research permit application relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

**DATES:** Comments or requests for a public hearing on the application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on December 20, 2004.

**ADDRESSES:** Written comments on the application should be sent to Protected Resources Division, NMFS, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. Comments may also be sent via fax to 503-230-5435 or by e-mail to [resapps.nwr@noaa.gov](mailto:resapps.nwr@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, Portland, OR (ph.: 503-231-2005, Fax: 503-230-5435, e-mail: [Garth.Griffin@noaa.gov](mailto:Garth.Griffin@noaa.gov)). Permit application instructions are available at <http://www.nwr.noaa.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Species Covered in This Notice

The following listed species (evolutionarily significant unit) is covered in this notice:

Coho salmon (*Oncorhynchus kisutch*): threatened Southern Oregon/Northern California Coast (SONCC).

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222-226). NMFS issues permits based on findings

that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

#### Application Received

##### Permit 1511

The Oregon Department of Fish and Wildlife (ODFW) is requesting a 5-year research permit to annually take adult and juvenile SONCC coho salmon in various streams in Southwest Oregon. The purposes of the project are to conduct fish presence and absence surveys and to rescue or salvage fish stranded during instream work projects. The work would benefit listed fish in two ways. Presence and absence surveys conducted before beginning instream work projects provide baseline information useful for determining project effects. Rescue and salvage operations increase fish survival in project areas. The ODFW intends to use electrofishing equipment to capture the fish. Most of the fish would be immediately released, but some may be transported short distances away from instream work areas. The ODFW does not intend to kill any of the fish being captured, but a small percentage may die as an unintended result of the research.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

**Dated:** November 15, 2004.

**Phil Williams,**

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

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 092104B]

#### Notice of Availability of Draft Stock Assessment Reports

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act (MMPA). After a review of SARs and new information on the status of marine mammals, NMFS determined that marine mammal stocks in the Alaska and Atlantic regions did not change status or the status could not be determined more accurately. SARs for marine mammals in these two regions were not revised. SARs for marine mammals in the Pacific region were revised according to new information. NMFS also proposes changes to the guidelines for preparing SARs. NMFS solicits public comments on draft 2004 Pacific reports and on proposed changes to the guidelines for preparing SARs.

**DATES:** Comments must be received by February 16, 2005.

**ADDRESSES:** Send comments or requests for copies of reports to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Stock Assessments. Comments may also be sent via facsimile (fax) to 301-427-2580 or via email to [mmsar.2004@noaa.gov](mailto:mmsar.2004@noaa.gov). Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Tom Eagle, Office of Protected Resources, 301-713-2322, ext. 105, e-mail [Tom.Eagle@noaa.gov](mailto:Tom.Eagle@noaa.gov) or Cathy Campbell, 562-280-4060, e-mail [Cathy.E.Campbell@noaa.gov](mailto:Cathy.E.Campbell@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

All draft stock assessment reports and the proposed revisions to the guidelines for preparing them are available via the Internet at [http://www.nmfs.noaa.gov/prot\\_res/PR2/](http://www.nmfs.noaa.gov/prot_res/PR2/)

*Stock\_Assessment\_Program/sars.html.*

## Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, 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 the 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 the Pacific region. NMFS solicits public comments on the draft 2004 Pacific SARs.

The SARs in the Alaska and Atlantic regions were reviewed along with new information on these stocks of marine mammals. Although new abundance or mortality estimates were available for some stocks in these regions, the status of no stocks in these regions would be changed. Furthermore, NMFS could not determine the status of marine mammal stocks in the Alaska or Atlantic regions with substantially improved accuracy. Therefore, the reports in these two regions were not revised.

NMFS convened a workshop in June 1994, including representatives from NMFS, FWS, and the Marine Mammal Commission, to prepare draft guidelines for preparing SARs. The report of this workshop (Barlow et al., 1995) included the guidelines for preparing SARs and a summary of the discussions upon which the guidelines were based. The draft guidelines were made available, along with the initial draft SARs, for public review and comment (59 FR 40527, August 9, 1995).

In 1996, NMFS convened a second workshop to review the guidelines and to recommend changes, if appropriate, to them. Workshop participants included representatives from NMFS, FWS, MMC, and the three regional

SRGs. The report of that workshop (Wade and Angliss, 1997) summarized the discussion at the workshop and contained revised guidelines. The revised guidelines represented minor changes from the initial version. The revised guidelines were made available for public review and comment along with revised stock assessment reports on January 21, 1997 (62 FR 3005).

In September 2003, NMFS again convened a workshop to review guidelines for SARs and again has proposed minor changes to the guidelines. Participants at the workshop included representatives of NMFS, FWS, MMC, and the regional SRGs. NMFS solicits public comments on the proposed changes to the guidelines for preparing SARs.

## Revisions to Stock Assessment Reports

The Pacific SARs contain new or revised stock assessments for 30 Pacific marine mammal stocks under NMFS' jurisdiction. Reports on the remaining 30 Pacific region stocks were not revised.

NMFS conducted its first comprehensive survey to estimate the abundance of cetaceans in the U.S. Exclusive Economic Zone (EEZ) surrounding the Hawaiian Archipelago in fall 2002. Results of this survey were incorporated into the draft 2004 SARs for Hawaiian cetaceans, including abundance and Potential Biological Removal (PBR) estimates for all Hawaiian stocks except blue and minke whales. Three new reports were added to the Pacific SARs as a result of the 2002 survey, Hawaiian stocks of sei whales, minke whales, and Longman's beaked whales. SARs for Hawaiian stocks of marine mammals were also updated to revised mortality estimates to include results of an increased level of observer coverage in the Hawaiian longline fishery.

The report for the Hawaiian stock of false killer whales has been changed to reflect information indicating fine-scale stock structure of false killer whales. The draft report includes two prospective stocks of false killer whales because whales in the EEZ around Palmyra Island are likely a different stock than around the Hawaiian Islands. The ranges of these two prospective stocks include the EEZ surrounding Palmyra Island and the EEZ surrounding the Hawaiian Islands, respectively. False killer whales in international waters are not included in either of these prospective stocks; however, the Hawaii longline fishery causes serious injury and mortality of false killer whales on the high seas. MMPA section 117 requires SARs to be

prepared for all stocks of marine mammals occurring in waters under US jurisdiction, but it has no provisions for assessing the status of marine mammal stocks found on the high seas. Therefore, it is unlikely that abundance and PBR estimates will be available for stocks of false killer whales and other cetaceans that do not occupy waters under US jurisdiction.

The SAR for Hawaiian monk seals was revised to indicate the PBR for this stock is undefined. The change is consistent with a recommended change to the guidelines for preparing SARs, discussed below.

## Revisions to Guidelines

Revisions to guidelines for preparing SARs focus primarily on stock structure and estimating PBR. The current guidelines for identifying stocks of marine mammals state, "For the purposes of management under the MMPA, a stock is recognized as being a management unit that identifies a demographically isolated biological population." Proposed revisions to the section of the guidelines entitled "Definition of Stock" generally clarify specific points related to demographic isolation as the basis for identifying stocks of marine mammals. Selected proposed changes to the guidelines are summarized below.

The definition of "population stock" or "stock" in the MMPA includes the phrase "interbreed when mature". The proposed changes to the guidelines recognize the phrase "interbreed when mature" includes cases in which a group of marine mammals migrates seasonally to a breeding ground where its members interbreed with members of the same group or with members of other demographically isolated groups that have migrated to the same breeding ground from other feeding areas. NMFS identified the Gulf of Maine feeding aggregation of humpback whales in the Western North Atlantic Ocean as a separate stock in 2000; thus, the proposed change emphasizes and clarifies practice NMFS has used in the past.

In the absence of data related to stock structure for a specific group of marine mammals, NMFS may use data on stock structure from other parts of a species' range to make inferences about the likely geographic sizes of stocks. The proposed guidelines clarify the use of indirect observation and information in such cases.

Another proposed change addresses "prospective stocks" when data suggest stock structure is more finely scaled than the current stock identity indicates, but the data are insufficient to fully

support a new stock. Under this change, abundance, PBR, and mortality estimates of the prospective stocks would be included in a SAR. The identification of management units of coastal bottlenose dolphins in the Western North Atlantic in the 2002 SARs is an example of a previous use of this concept although the terminology was different (management units versus prospective stocks). The 2004 draft SARs for the Hawaii stock of false killer whales identifies prospective stock structure in accordance with this proposed change.

In unusual situations, the formula Congress added to the MMPA to calculate PBR ( $N_{min} * 0.5R_{max} * Fr$ ) results in a number that is not consistent with the narrative definition of PBR (the maximum number of animals, not including natural mortality, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP). Such a situation arises when a stock is below its OSP and is declining or stable, yet human-caused mortality is a not a major factor in the population's trend. For example, Hawaiian monk seals are endangered, declining, and below OSP (based upon the abundance prior to the 1970s), yet human-caused mortality is insufficient to account for the decline or a failure to increase. A limited removal would not reduce the population's ability not reach or maintain its OSP after the major factors affecting the stock have been identified and addressed.

One option for PBR in these situations is to estimate PBR as zero. However, a PBR of zero may not reflect the concept of PBR included in the narrative definition. Furthermore, a PBR of zero would be inconsistent with Congress' concerns about the need to establish a procedure that allows for occasional taking of threatened or endangered species incidental to commercial fishing (See House Report 103-439 (March 21, 1994) at 30.) Therefore, in these unusual situations, NMFS may report PBR as "undefined". The draft 2004 SAR for Hawaiian monk seals has been changed in accordance with this proposed change to the guidelines.

Dated: November 15, 2004.

**P. Michael Payne**

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

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**BILLING CODE 3510-22-S**

## COMMODITY FUTURES TRADING COMMISSION

### Fees for Reviews of the Rule Enforcement Programs of Contract Markets and Registered Futures Association

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Establish the FY 2004 schedule of fees.

**SUMMARY:** The Commission charges fees to designated contract markets and the National Futures Association (NFA) to recover the costs incurred by the Commission in the operation of a program which provides a service to these entities. The fees are charged for the Commission's conduct of its program of oversight of self-regulatory rule enforcement programs (17 CFR part 1 Appendix B) (NFA and the contract markets are referred to as SROs).

The calculation of the fee amounts to be charged for FY 2004 is based on an average of actual program costs incurred in during FY 2001, 2002, and 2003, as explained below. The FY 2004 fee schedule is set forth in the **SUPPLEMENTARY INFORMATION**. Beginning with the FY 2004 fee, electronic payment of fees is required.

**EFFECTIVE DATES:** The FY 2004 fees for Commission oversight of each SRO rule enforcement program must be paid by each of the named SROs in the amount specified by no later than January 18, 2005.

**FOR FURTHER INFORMATION CONTACT:** Stacy Dean Yochum, Counsel to the Executive Director, Commodity Futures Trading Commission, (202) 418-5160, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. For information on electronic payment, contact Stella Lewis, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418-5186.

#### SUPPLEMENTARY INFORMATION:

##### I. General

This notice relates to fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission.

##### II. Schedule of Fees

Fees for the Commission's review of the rule enforcement programs at the registered futures associations and contract markets regulated by the Commission:

Entity	Fee amount
Chicago Board of Trade .....	\$81,264
Chicago Mercantile Exchange ..	318,729
Kansas City Board of Trade .....	11,866
New York Mercantile Exchange ..	136,622
Minneapolis Grain Exchange ...	6,605
National Futures Association ....	110,946
New York Board of Trade .....	51,075
BrokerTec Futures Exchange <sup>1</sup>	12,126
<b>Total .....</b>	<b>\$729,233</b>

<sup>1</sup> BrokerTec Futures Exchange, now known as Exchange Place Futures Exchange, LLC, ceased operations in November 2003. As of January 30, 2004, Exchange Place Futures is wholly owned by U.S. Futures Exchange (USFE).

### III. Background Information

#### A. General

The Commission recalculates the fees charged each year with the intention of recovering the costs of operating this Commission program.<sup>2</sup> All costs are accounted for by the Commission's Management Accounting Structure Codes (MASC) system, which records each employee's time for each pay period. The fees are set each year based on direct program costs, plus an overhead factor.

#### B. Overhead Rate

The fees charged by the Commission to the SROs are designed to recover program costs, including direct labor costs and overhead. The overhead rate is calculated by dividing total Commission-wide overhead direct program labor costs into the total amount of the Commission-wide overhead pool. For this purpose, direct program labor costs are the salary costs of personnel working in all Commission programs. Overhead costs consist generally of the following Commission-wide costs: Indirect personnel costs (leave and benefits), rent, communications, contract services, utilities, equipment, and supplies. This formula has resulted in the following overhead rates for the most recent three years (rounded to the nearest whole percent): 117 percent for fiscal year 2001, 129 percent for fiscal year 2002, and 113 percent for fiscal year 2003. These overhead rates are applied to the direct labor costs to calculate the costs of oversight of SRO rule enforcement programs.

#### C. Conduct of SRO Rule Enforcement Reviews

Under the formula adopted in 1993 (58 FR 42643, Aug. 11, 1993), which

<sup>2</sup> See Section 237 of the Futures Trading Act of 1982, 7 U.S.C. 16a and 31 U.S.C. 9701. For a broader discussion of the history of Commission Fees, see 52 FR 46070 (Dec. 4, 1987).