

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session which is open to the public.

DATES: The work session will be Monday, July 17, 2000, from 8 a.m. to 5 p.m.; Tuesday, July 18, 2000, from 8 a.m. to 5 p.m.; Wednesday, July 19, 2000, from 8 a.m. to 5 p.m.; and Thursday, July 20, 2000, from 8 a.m. to 12 p.m.

ADDRESSES: The work session will be held at the NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D-203, La Jolla, CA; (619) 546-7100.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326-6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to review draft sections of the fishery management plan (FMP) for highly migratory species (HMS) and related documents and activities for HMS fisheries off the West Coast. Specific topics may include species in the management unit, regulations, bycatch and protected species, essential fish habitat descriptions, data issues, and the plan development schedule.

Management measures that may be adopted in the FMP for HMS fisheries off the West Coast include permit and reporting requirements for commercial and recreational harvest of HMS resources, time and/or area closures to minimize gear conflicts or bycatch, adoption or confirmation of state regulations for HMS fisheries, and allocations of some species to noncommercial use. The FMP is likely to include a framework management process to add future new measures, including the potential for collaborative management efforts with other regional fishery management councils with interest in HMS resources. It would also include essential fish habitat and habitat areas of particular concern, including fishing and nonfishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The proposed FMP and its associated regulatory analyses would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson-Stevens Act, efforts by the United Nations to promote conservation and management of HMS

resources through domestic and international programs, and the increased scope of activity of the Inter-American Tropical Tuna Commission in HMS fisheries in the eastern Pacific Ocean.

Although nonemergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Don McIsaac at (503) 326-6352 at least 5 days prior to the meeting date.

Dated: June 16, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 00-15662 Filed 6-20-00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.061500C]

Endangered Species; Permits

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

ACTION: Receipt of application to modify permit (1144).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a request to modify permit (1144) from Mr. Michael J. Bresette.

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00pm eastern standard time on July 21, 2000.

ADDRESSES: Written comments on any of the new applications or modification

requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For application 1144M2, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 Ph.: 301-713-1401.

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3226 (301-713-1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301-713-1401, fax: 301-713-0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222-226).

Those individuals 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 hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Green turtle (*Chelonia mydas*), Kemp's ridley turtle (*Lepidochelys kempii*), Loggerhead turtle (*Caretta caretta*).

Modification Requests Received

The applicant requests a modification to Permit 1144. Permit 1144 authorizes the sampling for and collection of green, loggerhead and Kemp's ridley turtles in the Ft. Pierce Inlet, for the purposes of stock assessment to characterize the sea turtles that use the southern Indian River Lagoon System. Captured turtles will be weighed, photographed, measured, tagged and released. Modification #2 would extend the permit expiration date from July 31, 2000 to July 31, 2003.

Dated: June 16, 2000.

Craig Johnson,

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

[FR Doc. 00-15664 Filed 6-20-00; 8:45 am]

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DEPARTMENT OF COMMERCE**United States Patent and Trademark Office**

RIN 0651-AB23

Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112, ¶ 6

June 16, 2000.

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The U.S. Patent and Trademark Office (USPTO) is publishing the final supplemental examination guidelines to be used by Office personnel in their review of patent applications to determine (1) whether a claim limitation invokes 35 U.S.C. 112, ¶ 6, and (2) whether the written description describes adequate corresponding structure, material, or acts needed to support a claim limitation under 35 U.S.C. 112, ¶ 6. Because these supplemental examination guidelines are interpretive rules and general statements of policy, they are exempt from notice and comments rulemaking under 5 U.S.C. 553(b)(A).

DATES: The supplemental examination guidelines are effective June 21, 2000.

FOR FURTHER INFORMATION CONTACT: Magdalen Greenlief, by mail addressed to Box Comments, Commissioner for Patents, Washington, DC 20231, or Ray Chen, Office of the Solicitor, P.O. Box 15667, Arlington, Virginia 22215, or by facsimile transmission to (703) 305-8825, or by electronic mail at magdalen.greenlief@uspto.gov or ray.chen@uspto.gov.

SUPPLEMENTARY INFORMATION: The USPTO published "Interim Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112 ¶ 6" in the **Federal Register** on July 30, 1999, at 64 FR 41392, requesting comments from the public on the supplemental examination guidelines. The interim supplemental examination guidelines are adopted with modifications as suggested by some of the commentators noted below. In particular, (1) a statement has been added to the supplemental examination guidelines to clearly state that the guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law, (2) the third prong of the 3-prong analysis for determining whether a claim limitation invokes 35 U.S.C. 112, ¶ 6 has been modified to indicate that the phrase "means for" or "step for" must not be modified by sufficient structure, material, or acts for achieving the specified function, and (3) the last step of the process for making a *prima facie* case of equivalence of a prior art element during *ex parte* examination has been modified to state that where the examiner finds that the prior art element is an equivalent of the means- (or step-) plus-function limitation, the examiner should provide an explanation and rationale as to why the prior art element is an equivalent.

Discussion of Public Comments

Comments were received by the USPTO from three individuals, two bar associations, one law firm and one corporation in response to the request for comments on the interim supplemental examination guidelines. All comments have been fully considered. One comment was directed to Markush-type claims which is not germane to the subject matter addressed in these guidelines and thus, a response has not been included in the discussion below. One comment indicated that the supplemental examination guidelines will work well since under the supplemental examination guidelines applicants can clearly invoke or not invoke 35 U.S.C. 112, ¶ 6 and examiners can clearly determine whether or not 35 U.S.C. 112, ¶ 6 has been invoked. Other comments generally supported the 3-prong analysis, but with certain modifications.

Comment 1: One comment indicated that it is not clear whether the guidelines are interpretive and without force of law, or are intended to be rules or regulations (or their equivalent) issued under 35 U.S.C. 6 and having the force of law. The commentator suggested that a specific

statement be made as to the intent of the Office.

Response: The suggestion has been adopted. As stated in the "Supplementary Information" portion of the interim supplemental examination guidelines, these supplemental examination guidelines are interpretative rules and general statements of policy, and therefore, are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A). The USPTO will further include a statement in the body of the guidelines to clearly state that the guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law.

Comment 2: One comment stated that the proposed guidelines put a great deal of emphasis on form over substance since a "means" is a means whether one uses that word or not.

Response: The Federal Circuit has stated that when an element of a claim does not use the term "means," treatment as a means-plus-function claim element is generally not appropriate. *See Kemco Sales, Inc. v. Control Papers Co.*, 54 USPQ2d 1308, 1313 (Fed. Cir. 2000) ("absence of the word 'means' creates a presumption that section 112, paragraph 6 has not been invoked"), *Al-Site Corp. v. VSI Int'l, Inc.*, 174 F.3d 1308, 1318, 50 USPQ2d 1161, 1166 (Fed. Cir. 1999) ("when an element of a claim does not use the term 'means,' treatment as a means-plus-function claim element is generally not appropriate"), *Mas-Hamilton Group v. LaGard, Inc.*, 156 F.3d 1206, 1213-15, 48 USPQ2d 1010, 1016-18 (Fed. Cir. 1998), and *Greenberg v. Ethicon Endo-Surgery Inc.*, 91 F.3d 1580, 1584, 39 USPQ2d 1783, 1787 (Fed. Cir. 1996) ("use of the term 'means' (particularly as used in the phrase 'means for') generally invokes section 112(6) and that the use of a different formulation generally does not"). Even if the term "means" was used, the Federal Circuit has held, in certain circumstances, that the claim limitation does not invoke 35 U.S.C. 112, ¶ 6. *See Rodime PLC v. Seagate Tech., Inc.*, 174 F.3d 1294, 1303-04, 50 USPQ2d 1429, 1435-36 (Fed. Cir. 1999) (holding "positioning means for moving" does not invoke 35 U.S.C. 112, ¶ 6), and *Cole v. Kimberly-Clark Corp.*, 102 F.3d 524, 530-31, 41 USPQ2d 1001, 1006 (Fed. Cir. 1996) (claim limitation "perforation means * * * for tearing" does not invoke 35 U.S.C. 112, ¶ 6). The supplemental examination guidelines provide applicants with a simple method for clearly stating their intent to invoke 35 U.S.C. 112, ¶ 6. The specific phraseology used by the applicant in a