Country	Company	Weighted-Average Margin (Percent)
India	Alpanil Industries Ltd.	27.23
	Pidilite Industries Ltd.	66.59
	All Others	44.80
PRC	GoldLink Industries Co., Ltd.	12.46
	Nantong Haidi Chemical Co., Ltd.	57.07
	Trust Chem Co., Ltd.	39.29
	Tianjin Hanchem International Trading Co., Ltd.	85.41
	PRC-wide	241.32

Notification Regarding APO

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

The Department is issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 9, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–5713 Filed 3–15–10; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP71

Marine Mammal Stock Assessment Reports

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

ACTION: Notice of availability; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The 2009 reports are final and available to the public.

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: *http://www.nmfs.noaa.gov/pr/sars/*. You also may send requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, 7600 Sand Point Way, BIN 15700, Seattle, WA 98115.

Copies of the Atlantic Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, NMFS, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, *Tom.Eagle@noaa.gov*; Robyn Angliss, Alaska Fisheries Science Center, 206–526–4032, *Robyn.Angliss@noaa.gov*; Gordon Waring, Northeast Fisheries Science Center, 508–495–2311, *Gordon.Waring@noaa.gov*; or Jim Carretta, Southwest Fisheries Science Center, 858–546–7171, *Jim.Carretta@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal (PBR) level, 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 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 each of the three regions.

As required by the MMPA, NMFS updated SARs for 2009, and the revised reports were made available for public review and comment (74 FR 30527, June 26, 2009). The MMPA also specifies that the comment period on draft SARs must be 90 days. NMFS received comments on the draft SARs and has revised the reports as necessary. The final reports for 2009 are available (see ADDRESSES).

Comments and Responses

NMFS received letters containing comments on the draft 2009 SARs from the Marine Mammal Commission (Commission), four non-governmental organizations (Center for Biological Diversity, Humane Society of the United States, Cascadia Research Collective, and Hawaii Longline Association), a fishing company (Prowler Fisheries), and one individual. Most letters contained multiple comments.

Unless otherwise noted, comments suggesting editorial or minor clarifying changes were incorporated in the reports but were not included in the summary of comments and responses below. Other comments recommended development of Take Reduction Plans or to initiate or repeat large data collection efforts, such as abundance surveys, observer programs, or other mortality estimates. Comments on actions not related to the SARs (e.g., convening a Take Reduction Team or listing a marine mammal species under the Endangered Species Act (ESA)) are not included below. Many comments, including those from the Commission, recommending additional data collection (e.g., additional abundance surveys or observer programs) have been addressed in previous years. NMFS' resources for surveys, observer programs, or other mortality estimates are fully utilized, and no new large surveys or other programs may be

initiated until additional resources are available or until ongoing monitoring or conservation efforts can be terminated so that the resources supporting them can be redirected. Such comments on the 2009 SARs, and responses to them, may not be included in the summary below because the responses have not changed.

In some cases, NMFS' responses state that comments would be considered for, or incorporated into, future revisions of the SAR rather than being incorporated into the final 2009 SARs. The delay is due to review of the reports by the regional SRGs. NMFS provides preliminary copies of updated SARs to SRGs prior to release for public review and comment. If a comment on the draft SAR suggests a substantive change to the SAR, NMFS may discuss the comment and prospective change with the SRG at its next meeting.

Among the Commission's comments on another action (2009 List of Fisheries (LOF)), one was related to SARs. Because the comment period on the draft 2009 SARs was open when the Commission submitted that comment, a summary of it, and NMFS' response to it, are included in this notice rather than the notice for the final 2009 LOF.

In its letter (available on the Internet at the following address: *http://mmc.gov/letters/pdf/2009/sars__comments__92409.pdf*), the Commission also noted pertinent language in the MMPA and requested responses to its recommendations on the SARs. In the past NMFS has summarized and responded to Commission comments within the notice announcing availability of final SARs, as it has with comments from other writers. These notices, however, have not always identified the Commission's comments, which may have led to some confusion. Therefore, the Commission's comments on the draft 2009 SARs are explicitly noted to facilitate recognition of these comments and the responses to them. Some of the Commission's comments on the 2009 SARs contained recommendations related to activities (e.g., developing or implanting Take Reduction Plans or developing funding strategies) other than information included in the SARs. Responses to these comments are not included in this document and will be addressed in a letter to the Commission.

Comments on National Issues

Comment 1: One organization acknowledged that NMFS has regularly updated its SARs and has included a section on habitat concerns in many of them; however, they wrote that NMFS should include a "Habitat Concerns" section in all new SARs. Because the ocean is changing in response to global warming and ocean acidification, these threats should be discussed in the habitat sections. Similar comments were included for specific stocks of marine mammals (e.g., humpback whales, Central North Pacific stock), and the general response below applies to these stock-specific comments.

Response: The MMPA notes that SARs for strategic stocks should include other factors that may be causing a decline or impeding the recovery of the stock, including effects on habitat. Accordingly, some SARs (those for non-strategic stocks) do not need sections discussing habitat concerns, and for strategic stocks, such sections must discuss only those factors that may be causing a decline or impeding recovery.

Comment 2: The SARs tend to lag 2 years behind in incorporating available observer data. For those fisheries that have 100–percent observer coverage, such as the Hawaii-based swordfish fishery, such bycatch data are available in near real-time and should be included more promptly.

Response: Observed mortality and serious injury are not available in near real-time. The data must be reviewed and verified prior to inclusion in draft SARs. SARs are generally updated during the summer so they can be reviewed by the SRGs the following fall and winter, prior to release for a mandatory 90–day public comment period. NMFS does not use information that has become available, including data review and verification, after May or June in the draft revision. NMFS has considered the relative merits of a 2–year delay in reporting information and including information into the SARs before it has been thoroughly vetted and has concluded that the costs of reporting information that has not been reviewed exceed the costs of delaying information. (Also, see 74 FR 19530, April 29, 2009, response to Comment 2.)

Comment 3: For numerous stocks NMFS proposes to change PBR to "undetermined" because abundance data are more than 8 years old. There is no excuse for failing to update abundance estimates for many of these stocks. Stocks for which PBR is undetermined should be designated "strategic" because the lack of a PBR makes it impossible for NMFS to conclude that the stock does not meet the definition of strategic.

Response: NMFS conducts abundance surveys to the full extent allowed by resources, and resources for survey effort are at levels consistent with Administration priorities across the entire federal budget. Old or otherwise unreliable information results in increased uncertainty in making management decisions; however, NMFS' guidelines for assessing marine mammal stocks include a provision that uncertainty alone does not necessarily warrant labeling a stock as strategic.

Comment 4: The Commission recommended that NMFS list as "unknown" the PBR for all beaked whale stocks for which there is a reasonable basis for concern that they are being taken in fisheries or by other human activities.

Response: Currently there are no known recent fishery bycatch problems or mass stranding events of beaked whale stocks related to other anthropogenic activities. The Atlantic region uses a pooled PBR for undifferentiated beaked whales, and the Gulf of Mexico uses one PBR for Cuvier's beaked whales and another for undifferentiated Mesoplodon beaked whales; these PBRs are more informative than no PBRs at all. Therefore, as recommended by the Atlantic SRG and until methodologies are developed to reliably identify sightings of beaked whales by species, NMFS continues to derive a PBR for either Mesoplodon or undifferentiated beaked whales.

Comment 5: The Commission recommended that NMFS identify all transboundary stocks that are subject to partial assessment and develop a strategy to provide complete assessments.

Response: SARs illustrate the ranges of each stock; thus, the SARs identify transboundary stocks. NMFS does not plan to develop a strategy to provide complete assessment of all transboundary stocks because some transboundary stocks appear to be healthy, robust populations (e.g., California sea lions) despite uncertainty of the status of segments of the population occurring in waters not under the jurisdiction of the United States.

Comment 6: The Commission recommended that NMFS develop and implement a systematic approach for integrating all human-related risk factors into SARs.

Response: As noted in the response to Comment 38, the MMPA lists information that should be included in SARs. NMFS' SARs contain such information as directed by the MMPA but do not contain substantial amounts of additional information. A major strength of the SARs is that they are concise summaries of the status of each stock, focusing primarily on the effects of direct human-caused mortality and serious injury on marine mammals and

impacts to habitat when such impacts may result in the decline or failure of recovery of the affected stocks. In citation sections, the SARs identify sources of detailed information on status of marine mammals. (Also, see 74 FR 19530, April 29, 2009, response to Comment 11.)

Comments on Alaska Regional Reports

Comment 7: Loss of sea ice due to global warming is a human-caused threat to ice seals and, therefore, should be included in the determination of a stock as strategic.

Response: NMFS disagrees because the suggested designation would be inconsistent with the definition of "strategic stock" included in the MMPA.

Comment 8: The SAR for Cook Inlet beluga whales still considers the small Yakutat population of belugas part of the Cook Inlet stock. Yakutat belugas should be a separate stock and designated as "depleted".

Response: As noted in a previous response (74 FR 19530, April 29, 2009, Comment 14), NMFS regulations under the MMPA (50 CFR 216.15) include the beluga whales occupying Yakutat Bay as part of the Cook Inlet stock. Notice-and-comment rulemaking procedures would be required to change this regulatory definition. Until such procedures are completed, these animals remain designated as depleted as part of the Cook Inlet stock.

Comment 9: The SAR for Eastern North Pacific right whales should indicate a greater level of concern than "recent interest" in oil and gas exploration and development because the area is being formally evaluated for leasing.

Response: For the reasons cited in response to a similar comment on the 2008 SAR, a greater level of concern is not necessary at this time (see 74 FR 19530, April 29, 2009, Comment 17).

Comment 10: Sightings of narwhals in Alaska waters appear to be increasing, and NMFS should include a SAR for narwhal.

Response: NMFS is currently reviewing the existing data on narwhal sightings in Alaska waters to prepare a draft SAR for narwhals for 2010.

Comment 11: NMFS should update the SAR for Eastern North Pacific gray whales to include more recent abundance estimates. The SAR fails to properly consider findings of Alter *et al.* (2007), and NMFS should designate this stock as depleted.

Response: The SAR for the eastern North Pacific gray whale stock will be updated with substantial new information in 2010 after the necessary analyses are complete and reviewed. NMFS has responded to comments regarding Alter *et al.* (2007) and depleted status for gray whales in previous years (see 73 FR 21111, April 18, 2008, Comment 32 and 74 FR 19530, April 29, 2009, Comment 21). For the reasons discussed in those responses, NMFS neither anticipates additional discussion of the findings of Alter *et al.* (2007) nor designation of the gray whale stock as depleted. If information becomes available suggesting that gray whale abundance is below the lower limit of the stock's Optimum Sustainable Population (OSP), NMFS would formally evaluate status of the stock in accordance with MMPA section 115.

Comment 12: The Commission and another commenter repeated a recommendation made in previous letters to update harbor seal stock structure with information that has been available for many years.

Response: As noted in previous responses to comments (see 72 FR 12774, March 15, 2007, Comment 16, 73 FR 21111, April 18, 2008, Comment 23, 74 FR 19530, April 29, 2009, Comment 21), NMFS continues its commitment to work with the agency's co-managers in the Alaska Native community to evaluate and revise stock structure of harbor seals in Alaska.

Comment 13: Estimated mortality for longline fisheries uses incorrect observer coverage percentages, resulting in significant over-estimation of mortality. The observer coverage in the SAR is inconsistent with other reports prepared for NMFS.

Response: The observer coverage percentages reported for the longline fisheries are determined based on data obtained from the NMFS Observer Program. These data were used to estimate mortality and published in Perez (2006), which has been reviewed by NMFS Observer Program staff. The report referenced by the commenter was prepared in response to a request by the Observer Advisory Committee to demonstrate current strategies of observer placement on vessels and to modify methods for observer deployment on vessels of various sizes. This document was not designed to be used to calculate total observer coverage for fisheries. Attempts to calculate total observer coverage from this document would result in inaccurate estimations of observer coverage.

Comment 14: Effort can be determined accurately in fisheries with high observer coverage; therefore, proxies for effect (e.g., observed catch) are not necessary.

Response: As has been noted in the past (72 FR 66048, November 27, 2007, Comment 21), NMFS has considered other measures to estimate effort in the fishery. At this time, catch remains the best method of quantifying observed and total fishing effort. Should another measure of effort become available that can be used for all vessels, seasons, and areas, NMFS would consider modifying the analytical approach.

Comment 15: Expansions from observed to estimated mortality appear to be done inconsistently within and between fisheries.

Response: As noted in the response to Comment 23 in the 2008 LOF final rule (72 FR 66048, November 27, 2007), mortality estimates are based upon a stratified sample and analyses. The estimates are calculated using statistics appropriate for the sampling design. Similar numbers of observed mortalities or serious injuries may lead to different estimates because observer coverage differs among strata. The models used for estimates are explained fully in the reference cited in the SAR.

Comment 16: Default recovery factors should be re-evaluated for populations (e.g., sperm whales, Steller sea lions (Western stock), Central North Pacific humpback whales) that are increasing and/or are large.

Response: NMFS and the Alaska SRG evaluate the recovery factors for each stock during their annual review of the SARs. The recovery factors for these and other stocks will be discussed with the SRG at their next meeting when 2010 SARs are discussed.

Comment 17: As noted in the SAR for sperm whales, this species is at a low risk of extinction due to large numbers and minimal take. Accordingly, it should be de-listed from endangered status under the ESA and depleted status under the MMPA.

Response: NMFS completed a review of the status of sperm whales in January 2009 and concluded that the status should not change at this time. A report of that review is available on the Internet at the following address: *http://www.nmfs.noaa.gov/pr/pdfs/species/spermwhale_5yearreview.pdf.*

Comment 18: A single take of a humpback whale in the sablefish pot fishery is attributed to two stocks. This doubles the mortality from one take, and NMFS should consider distributing the single take across both stocks using a weighted probability of interaction with the stock.

Response: See responses to Comments 13 and 14 in the final 2005 LOF (71 FR 247, January 4, 2006), Comment 10 in the final 2003 LOF (68 FR 41725, July 15, 2003), and Comment 10 in the final 2008 LOF (72 FR 66048, November 27, 2007) for detailed responses to a similar

comment. The single take of a humpback whale in the sablefish pot fishery cannot be attributed to a specific stock. Therefore, NMFS is using a precautionary approach and attributing this single take to both Alaska stocks of North Pacific humpback whales for information purposes.

Comment 19: In the SARs for ice seals, the numbers of seals taken for subsistence harvest reported in the text and in the tables are different, and these differences are confusing. This situation should be clarified. Our comments here and in the past have noted that previous stock assessments have provided point estimates for native subsistence kills, but have also provided upper and lower estimates based on the bounds of confidence. This is no longer done in the stock assessments. We believe that the region should reconsider this decision. Because of the imprecision of these estimates, this information should be provided so that reviewers can gauge the possible range of impacts.

Response: NMFS has reviewed the numbers of seals taken for subsistence harvest reported in the draft 2009 SARs and updated the text and tables to clarify presentation of the information in the text and tables of the ice seal SARs.

NMFS has reported upper and lower confidence limits for subsistence harvests of some stocks in the past, but does not include them presently (e.g., beluga whales, Eastern Bering Sea stock). The SARs for these stocks note that variance estimates (or other measures of uncertainty) are not available. Without such measures, confidence limits cannot be calculated; therefore, none are included. For some stocks, the mortality estimates are noted to be underestimates because information is available from only a portion of the range of the stock. NMFS is aware of the potential consequences of underestimates, but, as noted in the introduction to this summary of comments and responses, funding levels limit the ability to initiate large new data collection programs until additional funds are obtained or until efforts directed toward other stocks are no longer necessary, which would allow resources to be re-directed.

Comment 20: There remains some inconsistency in declaring strategic status on the basis of outdated population and absent fishery data. Some (e.g., S.E. Alaska harbor porpoise) are designated strategic and others (e.g., Dall's porpoise) are not. There should be an explanation of this discrepancy.

Response: The PBR levels for harbor porpoise stocks in Alaska are "undetermined" because the population estimates are outdated. The harbor porpoise stocks were classified as "strategic" because there is information, for each stock, suggesting incidental serious injuries and mortalities may be greater than the stocks' PBR levels. Similarly, the PBR for Dall's porpoise is "undetermined" because the abundance estimate is outdated. However, federally-regulated fisheries that overlap with Dall's porpoise are observed with a high proportion of observer coverage and have routinely had very low levels of incidental mortality/serious injury. Some state fisheries with potential to result in serious injuries/mortalities of Dall's porpoise have been observed, and the estimated level of serious injury/mortality is also minimal or none. There are a few state fisheries with known historic serious injuries/mortalities of Dall's porpoise, but it seems unlikely that the level of serious injury/mortality from these fisheries would exceed the PBR level. Thus, Dall's porpoise stock was not classified as "strategic".

Comment 21: The SAR for the Western U.S. stock of Steller sea lions has inconsistent information in Table 2 and in the graph. It would help if the depiction in the graph matched the regions discussed in the text. Also, a shift from research focused on body condition and behavior of individuals to ecosystem-based studies would help answer questions such as potential shifts in abundance within the range of the stock.

Response: The data presented in Figure 2 were derived from those presented in Table 1, and the data are consistent. The graph (Figure 2) depicts the counts and overall trends for the entire western stock of Steller sea lions, as well as for the Gulf of Alaska and the Bering Sea/Aleutian Islands independently. The text provides more detailed information for trends at specific sites within these regions.

Comment 22: The subsistence harvest and struck-and-lost sea lions from the western stock of Steller sea lions appears to have increased. Given the lack of precision of harvest estimate, we are concerned that the increase may result in take exceeding PBR.

Response: The numbers of struck-and-lost sea lions from the subsistence harvest varies from year to year. The level of struck-and-lost sea lions, averaged over the most recent 5 years for which data are available, is incorporated into the total take for this stock. The current 5–year average (38.4) is slightly higher than the previous 5–year average (33.9). However, the total estimated annual level of total human-caused mortality and serious injury for this stock (232.8), which includes animals struck but lost, remains below the PBR level (247). NMFS is aware that there are uncertainties in the mortality and serious estimates for Steller sea lions and other stocks of marine mammals in Alaska and other parts of the United States and that human-caused mortality could, in fact, exceed PBR. However, the recovery plan for Steller sea lions indicates that the two primary sources of direct human-caused mortality (subsistence harvest and incidental take in commercial fisheries) are ranked as having relatively low impacts on recovery of the stock. In addition, the recovery factor for this stock of marine mammals would reserve 90 percent of annual net production for recovery (Barlow *et al.*, 1995), and performance testing through simulation models showed that the PBR approach was robust to wide ranges of precision and bias in mortality estimation (Wade, 1998).

Comment 23: The abundance estimates for the eastern stock of Steller sea lions are old despite permitted research designed to calculate annual estimates. Newer estimates should be reported.

Response: The abundance estimates presented in the 2009 SARs are based on the most recent complete counts for these areas and represent the best available data at the time the SAR was updated for 2009. NMFS is currently analyzing pup and non-pup counts from 2008 and 2009 for the eastern stock of Steller sea lions. These estimates will be incorporated in the SAR when they are available.

Comment 24: The SARs for the Western Pacific stock of humpback whales and fin whales do not include ship-strikes as a mortality factor. Even if no stock-specific strikes are reported, it seems unlikely that none have occurred. Does NMFS have confirmed stock identity for all whales found on ships so that each can be correctly assigned to a stock?

Response: The central North Pacific humpback whale SAR includes ship-strike mortalities in the estimated level of annual human-caused mortality and serious injury. NMFS assigned these mortalities to the central North Pacific stock based on the location of the occurrence. NMFS will be incorporating updated information on mortalities attributed to ship-strikes for humpbacks and fin whales in the 2010 SARs. Lacking confirmed stock identity of the whales found on ships, NMFS uses the relative stock densities in the areas where mortality likely occurs to assign it to a stock.

Comment 25: The SAR for Central North Pacific (CNP) humpback whales

divides the stock into four geographic areas (Hawaii, Aleutian Islands/Bering Sea, Gulf of Alaska, and Southeast Alaska) and estimates abundance in each region; however, the SAR does not estimate abundance of the stock. Division of the stock into these areas is neither scientifically accurate nor helpful from a management or scientific perspective.

Response: The SAR states that the CNP stock of humpback whales " winters in Hawaii " and presents abundance, minimum population estimate (Nmin), and PBR based upon these surveys of the stock in Hawaiian waters. The summary table for the SARs also shows the numbers for these parameters, which are identical to the numbers reported in the text of the report.

The division of the stock into the four areas is helpful to NMFS managers because the stock is migratory, whales from different breeding (wintering) areas mix on feeding grounds in Alaska, and reported human-caused mortality is higher in Alaskan waters than in Hawaiian waters. For the areas where information suggests trends in population abundance, each shows an increase, as is also the case for information on the entire ocean basin. The region-specific calculations allow NMFS managers to see that region-specific reported mortality is likely sustainable. The SAR reports mortality based primarily upon stranding reports, which are underestimates of actual mortality. However, the region-specific trends suggest that human-caused mortality is not causing the population to decline in any area where trend can be evaluated. Accordingly, the region-specific information is useful for conservation and management purposes.

Comment 26: Although NMFS reports that the point estimates for CNP humpbacks in Hawaii ranged from 7,469 to 10,103 and notes that the estimate from the "best model" is the upper end of the range, Nmin, thus PBR, for the Hawaii region is based upon the lowest estimate rather than the one from the best model. The SAR does not explain why NMFS did not use the best science in the calculation as is required by the MMPA.

Response: The SAR states that confidence limits or coefficients of variation (CVs) have not yet been calculated for abundance of the stock and that NMFS used an assumed value for CV in estimating Nmin from the abundance estimates. Accordingly, as required by the MMPA, the estimate of Nmin provides "reasonable assurance that the stock size is equal to or greater than the estimate." Such assurance could not be provided by using the maximum abundance estimate even it was calculated using the "best model".

Comment 27: The SAR for CNP humpback whales reports PBR as 20.4 animals and an alternative PBR of 8.3 whales, but it does not provide an explanation why two different PBRs were calculated or how they may be used for management purposes. If NMFS is going to develop multiple population sizes and PBRs, then NMFS should develop, as required by the MMPA, a single PBR for each of the regions and should not use the alternative PBR of 8.3 in the SAR.

Response: As is reported in the SAR text and the summary table for this stock of humpback whales, the PBR is 20.4. The alternative (8.3) is used only for information purposes and shows readers that even when PBR is calculated from an extremely conservative Nmin (i.e., the number of whales actually identified during the study), reported human-caused mortality is less than PBR.

Comments on Atlantic Regional Reports

Comment 28: Bottlenose dolphin stocks in the Gulf of Mexico should be designated strategic.

Response: In accordance with the MMPA, marine mammal stocks that are depleted, threatened, or endangered or for which human-caused mortality exceeds PBR are designated strategic. Others are not strategic, even in some cases where there is considerable uncertainty regarding abundance, mortality and serious injury.

Comment 29: Given the increasing trend of bycatch, Atlantic white-sided dolphins should be designated as strategic.

Response: Mean annual fishery-caused mortality and serious injury are below PBR; therefore, the stock is not appropriately designated as strategic.

Comment 30: Noting that the Poisson distribution could characterize rare and random events, the Commission recommended that the SAR for the Canadian East Coast stock of minke whales include an estimate of bycatch in the trawl fishery for which there was only one observed take.

Response: A total of three minke whales have been in observed in bottom trawl gear from 1997 through October 2009. NMFS intends to evaluate the estimation of total mortality of minke whales and harbor porpoise attributed to bottom trawl gear for the 2011 SAR.

Comment 31: The Commission recommended that NMFS conduct and report the necessary surveys to update the SARs for northwest Atlantic pinnipeds.

Response: NMFS is developing a new survey protocol for a harbor seal abundance survey; however, funding is not available for a 2010 survey. Since 2002, NMFS has been monitoring gray seal pup production on the three colonies (Muskeget Island in Nantucket Sound, and Green and Seal Islands off mid-coast Maine) in U.S. waters. The pup-monitoring research was a component of a recently-completed Ph.D. dissertation, and a published paper should be available in 2010. Information from these sources will be included in future SARs.

Comment 32: The SARs in the Atlantic region should include serious injuries identified in accordance with guidance from the 2007 workshop on distinguishing serious from non-serious injury, especially for North Atlantic right whales.

Response: NMFS is currently preparing guidelines for distinguishing serious and non-serious injuries. When these guidelines are completed and subjected to public review and comment, SARs will include serious injuries based upon them.

Comment 33: The minke whale SAR should include all entanglements included in the 2005 summary by Smith and Koyama. It is not clear why three mortalities from that document were not included in Table 5.

Response: These records have been re-reviewed by NMFS staff, who determined they were not serious injuries. Although evidence of entanglement was present, the necropsy report is inconclusive in the September 20, 2005, stranding. For the September 25, 2005, stranding, entanglement scarring was present, but the injury had healed. For the September 2007 stranding, there was insufficient information to determine the nature of the entanglement; images and descriptions were incongruous.

Comment 34: The SAR for sperm whales, Gulf of Mexico stock, discusses threats due to anthropogenic noise in the stock definition and range section. This would be more appropriate in another section on habitat concerns. The SAR should also address the potential impacts to sperm whales aggregated just off the Mississippi Delta from bioaccumulation of toxins from the river.

Response: The noise threat information has been moved and is included in the "Other Mortality" section. While there may be impacts from Mississippi River effluent on sperm whales and other marine mammals, specific reports on increases

in toxic effluent from the Mississippi River were not available. Given that little is known about contaminant levels in sperm whales in the Gulf of Mexico, any discussion would be speculation.

Comment 35: We note that there have been press reports or Internet postings of killer whales just off Texas and Alabama. This appears to represent an increased presence in areas not documented in the SAR. Given the seismic exploration and petroleum extraction underway or proposed, a change in distribution may entail additional risk not discussed in the stock assessments.

Response: Such increased reports are likely the result of more people with video cameras rather than increased numbers of killer whales in the Gulf of Mexico. The number of killer whale sightings made during NMFS assessment surveys (0–3 per survey) has remained about the same since 1990. Furthermore, sightings by the public are not new; O'Sullivan and Mullin (1997) report three records of killer whale sightings made by the public in the Gulf of Mexico prior to the mid–1990s.

Comment 36: Under population size, there is a different estimate for Ziphius (337) and Mesoplodon spp. (57). However, there is a notation in the stock assessment for Cuvier's beaked whales that "the estimate for unidentified Ziphiidae may also include an unknown number of Mesoplodon spp." Thus, it would seem that the Ziphius estimate is not, in fact, an estimate for them but is still a pooled estimate of multiple species. However, the stock assessments for Mesoplodonts (Blainville and Gervais beaked whales) do not include a similar caveat about possibly including Ziphius in that estimate. There is no explanation evident for the discrepancy. For both Ziphius and Mesoplodon, the map of distribution is for "beaked whales," which would include both of these genera. This is confusing and potentially misleading when reviewers attempt to gauge the status and threat to species in the Northern Gulf of Mexico.

Response: The wording in the affected beaked whale SARs for the Gulf of Mexico has been modified to resolve these discrepancies. The distribution maps will be changed in future SARs.

Comments on Pacific Regional Reports

Comment 37: The SARs for some species in Hawaiian waters (rough-toothed dolphins, bottlenose dolphins, pygmy killer whales, spinner dolphins, dwarf sperm whales, Cuvier's beaked whales and Blainville's beaked whales) should be updated to include evidence of multiple stocks.

Response: New information on stock structure for bottlenose and spinner dolphins in Hawaiian waters will be incorporated in the 2010 draft SARs. Stock structure information for other species will be incorporated into SARs as information becomes available to warrant the recognition of additional stocks.

Comment 38: In comments on the draft 2009 LOF, the Commission recommended that NMFS incorporate into the applicable SARs language similar to that included in the FWS SAR for the Washington stock of sea otters to clarify that, in accordance with the ruling in Anderson v. Evans, taking of marine mammals in tribal fisheries requires authorization under the MMPA.

Response: NMFS disagrees with the FWS interpretation of the ruling. Furthermore, even if FWS' interpretation were correct, MMPA section 117(a) explicitly lists the information that should be included in SARs. This list does not include identifying which takes need to be authorized and which do not. Accordingly, such language is inappropriate for SARs.

Comment 39: There is little mention of deaths of marine mammals resulting from research activities (e.g., research on California or Steller sea lions and fishery assessments). These should be included in the SARs.

Response: Information on research-related mortality will be included in 2010 draft SARs for northern fur seal, northern right whale dolphin and Pacific white-sided dolphin. Information on research-related mortality of California sea lions will be included in the next revision of that SAR.

Comment 40: Because tribal fisheries are not subject to federal observers and, as noted in Credle *et al.* (1994), self-reports are considered under-estimates, there may be a significant bias in reporting mortalities from gillnet fisheries.

Response: NMFS acknowledges that bycatch reports may be negatively biased when the only sources are self-reports and has noted such bias in previous SARs.

Comment 41: The MMPA requires that SARs for strategic stocks, such as those stocks listed as threatened or endangered, be updated annually, yet some were not updated. For example, fin whales have no revision although there is documented mortality that occurred during the reporting period (e.g., a 2006 mortality due to vessel collision in Washington).

Response: The commenter has misinterpreted the requirement of MMPA section 117(c). The MMPA requires that SARs for strategic stocks must be "reviewed" annually and "revised" when the status has changed or could be assessed more accurately. The SARs for all strategic stocks (including stocks for which strategic status is due to listing under the ESA) are reviewed annually, as required. The inclusion of a relatively small change in estimated mortality or abundance would not change the status of these stocks nor allow their status to be assessed more accurately. Although NMFS attempts to update SARs when information becomes available (whether the new information would change the status or not), some minor changes are not incorporated into a SAR each year.

Comment 42: The Hawaiian monk seal SAR should be updated to report that two monk seals were killed by gunshot in the main Hawaiian Islands. Also, the SAR should include more information about the loss of pupping habitat due to rising sea level.

Response: Although two monk seals were shot in 2009, these shootings did not occur early enough for inclusion in the 2009 or 2010 draft SARs. These shootings will be noted in the 2011 SAR. Interested readers may obtain and review the literature in the SAR for more details of loss of habitat due to rising sea level.

Comment 43: NMFS needs to obtain precise information on interactions of "nearshore" fisheries with Hawaiian monk seals. NMFS should work with the State to assure observer coverage in this fishery, which seems to have takes in almost every year.

Response: NMFS is working with the State of Hawaii to better characterize nearshore fishery interactions. The State has received a grant under section 6 of the ESA to work with NMFS in developing a system of monitoring, reporting and reducing these interactions via participatory approaches with nearshore fishers who engage in fishing methods (gill nets and shorecasting) that cause the most interactions.

Comment 44: The PBR for the Monterey Bay stock of harbor porpoise should not be reduced by changing the recovery factor from the previous 0.45 to 0.5 due to the downward trend of the stock.

Response: NMFS agrees. Given continued uncertainty in the source of fishery-related standings in this region, the recovery factor should remain at 0.45. The final 2009 SAR will reflect the use of this recovery factor in the PBR calculation.

Comment 45: The SAR for the Northern Oregon/Washington Coast stock of harbor porpoise should include mortality information on the 2006/2007 Unusual Mortality Event (UME) because some of the deaths could be attributed to fishery interactions.

Response: Fishery-related mortality information from the 2006–2007 UME is included in the Northern Oregon/Washington Coast harbor porpoise SAR. Both suspected and confirmed fishery-related mortalities from the UME are listed in the text, and confirmed mortalities are included in Table 1 under "Unknown fishery".

Comment 46: The "Habitat Concerns" section for Southern Resident Killer Whales should note that global warming and ocean acidification, as well as stream flows and health, pose an increasing threat to salmon and the killer whales that depend upon salmon.

Response: The SAR notes that Southern Resident Killer Whales appear to be Chinook salmon specialists and that change in salmon abundance is likely to have effects on this population. The factors affecting salmon abundance are implicit in this statement.

Comments 47 through 58 address false killer whales, primarily in waters surrounding Hawaii.

Comment 47: Available evidence, which was not included in the SAR, indicates that the Hawaii insular stock of false killer whales should be a strategic stock. Also, the SAR for this stock notes there is no quantitative analysis of sightings data to evaluate population trend. A statistical analysis was presented to the Western Pacific Fishery Management Council showing a significant decline in the number of groups per 10 survey hours during the period, 1993–2003.

Response: The MMPA includes specific criteria for designating a marine mammals stock as "strategic". None of these criteria are currently met for the insular stock of false killer whales; therefore, it is designated as "not strategic". NMFS will continue to review new information periodically and update the SAR based on new information. The trend analysis mentioned by this commenter was not available when the SAR was drafted and presented to the Pacific SRG in November 2008; it will be considered for the draft 2010 SARs.

Comment 48: The SAR for the insular stock indicates no habitat issues are a concern, yet notes recent evidence of high levels of pollutants and reduced biomass of prey species. These should be included as habitat concerns.

Response: NMFS has modified the 2009 SAR to remove this apparent contradiction by eliminating the statement that no habitat issues are of concern.

Comment 49: The insular stock of false killer whales should be strategic, because two takes in 2003 were during sets straddling the stock boundary and because there are two takes of probable false killer whales within the range of the insular stock. If even one of these takes were inside the boundary, then the estimated bycatch would likely exceed PBR.

Response: NMFS recognizes that the occurrence of longline sets straddling false killer whale stock boundaries complicates stock-specific bycatch estimation. The text of the 2009 SAR has been revised to clarify that the two 2003 false killer whale takes occurred in sets straddling the insular/offshore stock boundary and that these takes are provisionally considered to be from the pelagic stock. NMFS is also working on developing new analytical methods to estimate stock-specific bycatch and plans to present updated estimates for both stocks in the draft 2010 false killer whale SAR. Distinguishing takes of false killer whales and short-finned pilot whales remains problematic because the geographic ranges of these two species differ and sample sizes are insufficient to estimate a geographically-stratified ratio that might be used for pro-rating such takes. NMFS will continue to evaluate methods of addressing this source of uncertainty.

Comment 50: The SAR should include information on how frequently portions of longline gear are lost both in the shallow-set and deep-set fishery so that the likelihood that there are unobserved takes due to lost gear can be assessed.

Response: NMFS does not presently have estimates of the rates of gear loss in the deep-set and shallow-set longline fisheries.

Comment 51: The SAR should assess whether seasonal observer coverage of longline fisheries within the range of the insular false killer whale stock is sufficient to robustly assess bycatch rates. In addition, there are unobserved shortline fisheries that occur nearshore in the Hawaiian Islands that are using the same gear as offshore fisheries and are, thus, likely to be taking false killer whales.

Response: The shallow-set fishery has 100–percent observer coverage, and the deep-set fishery has a minimum of 20–percent annual coverage. Placement of observers and all statistical analyses are conducted on a quarterly basis to account for temporal variation in coverage, providing robust rates of mortality and serious injury.

NMFS included a Hawaii State shortline/handline fishery as a Category II fishery in the 2010 LOF. The inclusion of this fishery on the List is an early step in obtaining information on marine mammal interactions with the fishery, including mandatory reporting of injuries of marine mammals incidental to fishing operations.

Comment 52: The report is confusing because it includes multiple stocks within a single report, and it includes mortality and injury estimates combined across stocks.

Response: NMFS acknowledges that the current report, which includes a stock complex rather than individual reports for each stock, may be confusing. However, population stock boundaries in false killer whales in the North Pacific Ocean contain uncertainties, and an ongoing stream of information over the past few years has resulted in fairly rapid changes in our understanding of stock boundaries. NMFS has elected to combine these stocks into a single report which presents abundance and mortality information in a variety of scenarios as our understanding of stock structure remains dynamic. When our understanding of stock structure becomes more stable, the report will likely be modified to separate reports for each stock.

Comment 53: Distinction between Insular, Pelagic and Palmyra stocks of false killer whales is inaccurate because the pelagic animals are all part of a broader Eastern North Pacific Stock that occurs in the U.S. Exclusive Economic Zone (EEZ) and international waters.

Response: NMFS has previously responded to this and related comments (see 73 FR 21111, April 18, 2008, Comment 47, and 74 FR 19530, April 29, 2009, Comment 34) and reiterates that the stock division for false killer whales is consistent with the MMPA and with NMFS 2005 Guidelines for Assessing Marine Mammal Stocks (GAMMS), which were finalized after opportunity for public review and comment, and provide guidance on abundance and PBR of transboundary stocks. No international agreements presently exist for the management of cetacean bycatch in central Pacific longline fisheries; therefore, NMFS assesses the status of marine mammal stocks within the U.S EEZ waters, based on EEZ abundances and EEZ mortalities and serious injuries. Further, as noted in GAMMS, the lack of genetic differences among false killer whale samples from the broader eastern North Pacific region does not imply that these animals are from a single eastern North Pacific stock.

Comment 54: NMFS' abundance estimate for the pelagic stock is scientifically unsound. Specifically, and as described in more detail in a report enclosed with the comment, NMFS' abundance estimate fails to employ a Bayesian methodology, which is well-recognized in the scientific community as the best available method for estimating the population size of marine stocks such as the false killer whale pelagic stock. An alternative analysis of the existing false killer whale data utilizes the best available scientific methods and provides a best estimate of the Hawaii Pelagic Stock as 2,066 whales.

Response: NMFS disagrees that the alternative included in this comment represents the best available scientific information. Bayesian analyses may constitute excellent science and are widely used by NMFS scientists in assessing marine animal populations; however, the report enclosed with this comment has not been peer-reviewed or published, and it violates the fundamental principle of choosing an appropriate prior distribution when conducting a Bayesian analysis. The report assumes that the density of false killer whales in highly productive waters of the Eastern Tropical Pacific Ocean would be a suitable prior for their density in the unproductive waters surrounding Hawaii. The report did not discuss a rationale for this assumption or evaluate alternate, more suitable, data sets for the prior distribution. There is no ecological or oceanographic support for this assumption. Rather, there are differences in ocean productivity between the Eastern Tropical Pacific Ocean and the Hawaiian EEZ, and densities of most tropical dolphin species, including false killer whales, decline as one moves north from tropical latitudes and into the subtropical waters of the Hawaiian Islands.

Comment 55: NMFS fails to discuss a report from April 2009 documenting depredation in the Hawaii longline fishery based on interviews with vessel owners and captains. The comment states that the report constitutes current, published, and NMFS-funded scientific research suggesting that the sheer magnitude of catch depredation by false killer whales implicates a population size much larger than the 484 estimate reported in the 2009 draft SAR.

Response: The report cited in this comment was not available in 2008 when the draft 2009 SAR was prepared, and the report and its findings have not been subjected to peer review. Estimates in the report contain many untested assumptions (e.g., species identification, range of fishery). Furthermore, NMFS' abundance estimate of 484 is limited to the U.S. EEZ, whereas the depredation report included observations from a much larger area where the fishery operates. No assumption about uniformity of false killer whale distribution has been made in NMFS' estimates of abundance.

Comment 56: False killer whale densities on the high seas south of Hawaii should lead to a higher PBR for high seas stocks, warranting Cat II or III classification for the high seas component of the fishery.

Response: Although the fishery is conducted on the high seas as well as within the EEZ, the fishery is classified based upon its take of false killer whales in within the EEZ, where only U.S.-based fishing occurs. Incidental mortality and serious injury incidental to longline fishing within the EEZ exceed a PBR based upon surveys within the EEZ. Furthermore, mortality and serious injury of false killer whales exceed 50 percent of a number calculated using the PBR approach for false killer whales on the high seas areas of the fishery (which is also subject to an additional unknown level of mortality incidental to a substantial longline fishing effort by vessels from other nations within the range of the U.S. fishery on the high seas). Accordingly, the fishery is appropriately classified as a Category I fishery over its entire range.

Comment 57: Reeves *et al.* make several unsubstantiated assertions. Even if the insular stock has declined, there is no evidence that the longline fishery is responsible. No evidence of strandings or sightings of carcasses were made in support of a large mortality. SAR guidelines state old abundance data should not be used.

Response: Reeves *et al.* is a peer-reviewed scientific article that clearly outlines the data and basis for their conclusions, including observed line injuries and decreases in sighting rates. In the SAR, the longline fishery is listed only as one potential contributing factor, reflecting uncertainty in the sources of such injuries. The longline fishery operated within the known range of the insular false killer whale stock during the early 1990s, when the decline began, but there was no observer program to document potential interactions with cetaceans. Further, it is well established that animals that die at sea rarely strand or are recorded at sea, but rather they sink or are swept away from land by currents. The SAR guidelines state that old abundance data are unreliable to estimate current abundance. However, older data are essential for evaluating trends, and their inclusion in this historical context is fully warranted.

Comment 58: There is no evidence that the insular stock has interacted with longline fisheries.

Response: NMFS recognizes that the data available for determining stock identity of false killer whales is incomplete for this 2009 SAR. At the time of the 2009 SAR preparation, genetic samples were only available for five of the 24 false killer whales taken by the fishery (and only for two of the takes within HI EEZ waters). Thus, the identity of the majority of false killer whales taken by the fishery is unknown and can be assigned based only on location. No tissue samples are available for three takes that occurred during sets spanning the insular/pelagic stock boundary, and these animals could have been from the insular stock based on the distance from the islands at which they have been documented. NMFS will continue to investigate ways to improve allocation of stock-specific bycatch, taking into account takes and fishing effort within the insular stock range. NMFS will also continue efforts to obtain tissue samples for genetic analysis on as many animals as possible to aid in stock identification.

Dated: March 10, 2010.

Helen M. Golde,

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV22

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a joint public meeting of its Habitat Committee, Advisory Panel and Plan Development Team in April, 2010 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.