

NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 08/16/2009

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 02/19/2009

ACTION REQUESTED: Extension without change of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 200902-0648-002
AGENCY ICR TRACKING NUMBER:
TITLE: Applications and Reports for Registration as a Tanner or Agent
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0179

The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 08/31/2012

DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	54	108	0
New	56	112	56
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	0	0	0
Change due to Agency Adjustment	2	4	56
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE: This request is approved. Prior to resubmission of the request for further extension, the Agency should assess burden estimates taking into account most recent experience.

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs

IC Title	Form No.	Form Name	CFR Citation
Applications for Registration as a Tanner or Agent			50 CFR 216.23
Tanner or Agent Annual Reports			50 CFR 216.23

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request	2. OMB control number b. <input type="checkbox"/> None a. _____ - _____
3. Type of information collection (<i>check one</i>) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note Item A2 of Supporting Statement instructions	4. Type of review requested (<i>check one</i>) a. <input type="checkbox"/> Regular submission b. <input type="checkbox"/> Emergency - Approval requested by _____ / _____ / _____ c. <input type="checkbox"/> Delegated
7. Title	5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input type="checkbox"/> No
8. Agency form number(s) (<i>if applicable</i>)	6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: _____ / _____
9. Keywords	
10. Abstract	
11. Affected public (<i>Mark primary with "P" and all others that apply with "x"</i>) a. ___ Individuals or households d. ___ Farms b. ___ Business or other for-profit e. ___ Federal Government c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government	12. Obligation to respond (<i>check one</i>) a. <input type="checkbox"/> Voluntary b. <input type="checkbox"/> Required to obtain or retain benefits c. <input type="checkbox"/> Mandatory
13. Annual recordkeeping and reporting burden a. Number of respondents _____ b. Total annual responses _____ 1. Percentage of these responses collected electronically _____ % c. Total annual hours requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____	14. Annual reporting and recordkeeping cost burden (<i>in thousands of dollars</i>) a. Total annualized capital/startup costs _____ b. Total annual costs (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____
15. Purpose of information collection (<i>Mark primary with "P" and all others that apply with "X"</i>) a. ___ Application for benefits e. ___ Program planning or management b. ___ Program evaluation f. ___ Research c. ___ General purpose statistics g. ___ Regulatory or compliance d. ___ Audit	16. Frequency of recordkeeping or reporting (<i>check all that apply</i>) a. <input type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____
17. Statistical methods Does this information collection employ statistical methods <input type="checkbox"/> Yes <input type="checkbox"/> No	18. Agency Contact (person who can best answer questions regarding the content of this submission) Name: _____ Phone: _____

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention period for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)

Signature

Date

Signature of NOAA Clearance Officer

Signature

Date

**SUPPORTING STATEMENT
APPLICATIONS AND REPORTS FOR REGISTRATION AS AN AGENT OR TANNER
OMB CONTROL NO.: 0648-0179**

A. JUSTIFICATION

This request is for renewal of this information collection.

1. Explain the circumstances that make the collection of information necessary.

The Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq., Sections 1371, 1373, 1374 and 1379) mandates the protection and conservation of marine mammals and makes the taking, killing or serious injury of marine mammals, except under permit or exemption, a violation of the Act. An exemption is provided for Alaskan natives to take marine mammals if the taking is for subsistence or for creating and selling authentic native articles of handicraft and clothing. Possession of marine mammals and marine mammal parts by other than Alaskan natives is therefore prohibited (exception, 50 CFR 216.26: beach-found non-Endangered Species Act (ESA) teeth or bones that have been registered with National Marine Fisheries Service (NMFS)). As native handicrafts are allowed by the MMPA to enter interstate commerce, an exemption is also needed to allow non-natives to handle the skins or other marine mammal produce, whether to tan the pinniped hide or to act as an agent for the native to sell his handicraft products.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with all applicable Information Quality Guidelines.

The information required by 50 CFR 216.23 is of two types:

Applications: Information is required to identify the applicant as a tanner/agent in order to preclude prosecution under the MMPA and to determine that he/she has an acceptable record keeping program to accurately account for those marine mammal products received. This information serves as a deterrent for those individuals who might use this registration program for entering prohibited marine mammal products into interstate commerce.

Reports: Information is also needed annually to evaluate the agent/tanner's activities during the year, and his/her procedures for bookkeeping and yearly inventory to assure NMFS, the Marine Mammal Commission and the general public that prohibited marine mammal products were not being transshipped through registered agents.

The reporting requirements are:

- (a) Report in writing to the Assistant Administrator for Fisheries, National Marine Fisheries Service, any changes in the facts stated in Registrant's applications for this Certificate of Registration within 30 days of such change;

(b) Maintain current records of each transaction authorized stating the marine mammals or marine mammal parts or products involved, from whom received, any processing accomplished, to whom returned, and the date of each such transaction. These records shall be kept separate and apart from other records maintained in the ordinary course of business and shall be retained for not less than three years;

(c) Annually, during the month of January, send certified copies of such records (annual report) to the Assistant Administrator for Fisheries.

As explained in the preceding paragraphs, the information gathered has utility. NMFS will retain control over the information and safeguard it from improper access, modification, and destruction, consistent with National Oceanic and Atmospheric Administration (NOAA) standards for confidentiality, privacy, and electronic information. See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Although the information collected is not expected to be disseminated directly to the public, results may be used in scientific, management, technical or general informational publications. Should NOAA/NMFS decide to disseminate the information, it will be subject to the quality control measures and pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

The process is a simplified registration and reporting system. All forms are sent to the Agent or Tanner applicant and returned to the NOAA/NMFS/Enforcement Office by United States (U.S.) mail. The collection of information does not involve the use of automated, electronic, mechanical, or other technological techniques or other forms of information technology.

4. Describe efforts to identify duplication.

No known duplication exists. A similar registration system exists with the U.S. Fish and Wildlife Service for those marine mammal species for which, they have statutory responsibility. These species are different from those marine mammals' species under the purview of NMFS.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The information requested is already at a minimum; sufficient only to identify the applicant and to assure NMFS that these specific illegal marine mammal products are not entering interstate commerce.

6. Describe the consequences to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

Annual reporting is considered the minimum acceptable limit to adequately monitor activities. Less frequent monitoring would require NMFS to consider alternate methods (i.e., enforcement investigations) to assess the level of marine mammal products in interstate commerce.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with OMB Guidelines.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A Federal Register Notice published on October 9, 2008 (73 FR 59604) solicited public comments. No comments were received.

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

None are provided.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

No assurance of confidentiality is given. However, annual reports will be reviewed and any business information that would aid competition and impact on the registrant would be precluded from release.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No sensitive questions are asked of applicants.

12. Provide an estimate in hours of the burden of the collection of information.

There are currently 52 registered respondents who submit reports annually and there are, on average, two new applicants per year. Experience indicates that it takes about two hours to complete an application and to complete a yearly report.

Applications: 2 applicants/year x 2 hours/application = 4 hours

Reports:

First year: 52 registrants x 1 report/year x 2 hour/report = 104 hours.

Second year: 54 registrants x 1 report/year x 2 hours/report = 108 hours.

Third year: 56 registrants x 1 report/year x 2 hours/report = 112 hours.

Average annual registrant reporting hours: 108 hours.

Total annualized registrant burden hours: 4 hours + 108 hours = 112 hours.

Annualized responses and hours: 56 responses and 112 hours.

The estimated annual labor cost to the general public based on a rate of \$25 is \$2,800: 112 hours x \$25.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

The only costs are for mailing and copying. At an estimated \$1 per response, total annual costs would be \$56.

14. Provide estimates of annualized cost to the Federal government.

Cost to the government estimated at 20 hours @ \$25 per hour = \$500.

15. Explain the reasons for any program changes or adjustments.

Based on the assumption of 2 additional applicants per year, with none withdrawing during the next three years, the average responses and burden hours will increase by two and four, respectively. The cost will increase by \$2. NOTE: when the information collection request was migrated to ROCIS, the cost was rounded down to zero: the previous cost was, in fact, \$54.

16. For collections whose results will be published, outline the plans for tabulation and publication.

There are no plans to publish this information.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.

N/A

18. Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.

N/A

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Our collection does not employ statistical methods.

MEMORANDUM FOR: (Name and
Company)

FROM: Les Cockreham F/EN 4

SUBJECT: Tanner/Agent Permit Application

To apply for registration as a Tanner and/or Agent for marine mammals parts received from and taken by an Indian, Aleut or Eskimo who resides on the coast of the North Pacific Ocean or Arctic Ocean or Alaska native who resides in Alaska and the part was taken for subsistence purposes, you need only to write a letter to the address on the front of the Fax Cover sheet, detailing your plans, location of the activity, name of the registrant, address and company name and address. Please send the letter with attention to: Enforcement Officer Les Cockreham.

I have enclosed copies of the regulations related to this activity: please review Section 216.23 and pay particular attention to Section 216.23 (c). If you have further questions, please call me at (907) 217-3021.

(Name) (Address)
(Phone Number)

Dear Mr . /Ms . (Name) :

Enclosed is a Certificate of Registration No.102 (File No. T102) to possess and process marine mammal products as provided in the Marine Mammal Protection Act of 1972, as amended, and the regulations published under that Act. Any member of your business can act as an agent under this Certificate. A copy of the Marine Mammal Protection Act and its regulations are enclosed for your information.

You will note that the Certificate of Registration contains requirements for reporting your activities. The specifics are covered in paragraphs 1(b) and 1(c) of the Conditions. An effort has been made to keep such requirements to a minimum and still provide for the accumulation of information necessary for the proper administration of this conservation law. When providing reports or correspondence, please refer to both the File No. and Registration No.

Sincerely,
Mark Spurrier
Deputy Chief
Office of Law Enforcement

Enclosures

REGISTRANT, provided that it will not be suspended or revoked until after notice and hearing, if a hearing on such suspension or revocation is requested by the REGISTRANT.

3. This Certificate of Registration, or amended Certificate, is valid for the business location listed from the date of issuance until it is suspended or revoked.
4. Violating the conditions of this Certificate or engaging in activities not authorized by this Certificate with respect to the marine mammals covered shall subject the REGISTRANT to the penalties provided in the Marine Mammal Protection Act of 1972.

Mark Spurrier
Deputy Chief
Office of Law Enforcement

Date

F/EN:
SYY

(Name)
(Address)
(Phone Number)

This is to remind you that the Certificate of Registration, issued to you under the provisions of the Marine Mammal Protection Act of 1972 and Regulations Governing the Taking and Importing of Marine Mammals (50 CFR 216.23) requires an annual report be submitted during the month of January each year. The specifics of these reports are covered in paragraph 1(b) and 1(c) of the conditions attached to your Certificate. If no activity was conducted, a statement to that effect should be submitted. Failure to submit the required reports could subject you to suspension of your Certificate as provided for in paragraph 4 of the conditions. Please submit your report for calendar year 2xxx to: NOAA Fisheries Office for Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

Sincerely,
Les Cockreham
Protected Resources Enforcement Programs

TITLE 16—CONSERVATION

CHAPTER 31—MARINE MAMMAL PROTECTION

SUBCHAPTER I—GENERALLY

§ 1361. Congressional findings and declaration of policy

The Congress finds that—

- (1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;
- (2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect essential habitats, including the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;
- (3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;
- (4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;
- (5) marine mammals and marine mammal products either—
 - (A) move in interstate commerce, or
 - (B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals and their habitats is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

- (6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the carrying capacity of the habitat.

TITLE 16—CONSERVATION

CHAPTER 31—MARINE MAMMAL PROTECTION

SUBCHAPTER II—CONSERVATION AND PROTECTION OF MARINE MAMMALS

§ 1371. Moratorium on taking and importing marine mammals and marine mammal products

(a) Imposition; exceptions

There shall be a moratorium on the taking and importation of marine mammals and marine mammal products, commencing on the effective date of this chapter, during which time no permit may be issued for the taking of any marine mammal and no marine mammal or marine mammal product may be imported into the United States except in the following cases:

(1) Consistent with the provisions of section 1374 of this title, permits may be issued by the Secretary for taking, and importation for purposes of scientific research, public display, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock, or for importation of polar bear parts (other than internal organs) taken in sport hunts in Canada. Such permits, except permits issued under section 1374 (c)(5) of this title, may be issued if the taking or importation proposed to be made is first reviewed by the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under subchapter III of this chapter. The Commission and Committee shall recommend any proposed taking or importation, other than importation under section 1374 (c)(5) of this title, which is consistent with the purposes and policies of section 1361 of this title. If the Secretary issues such a permit for importation, the Secretary shall issue to the importer concerned a certificate to that effect in such form as the Secretary of the Treasury prescribes, and such importation may be made upon presentation of the certificate to the customs officer concerned.

(2) Marine mammals may be taken incidentally in the course of commercial fishing operations and permits may be issued therefor under section 1374 of this title subject to regulations prescribed by the Secretary in accordance with section 1373 of this title, or in lieu of such permits, authorizations may be granted therefor under section 1387 of this title, subject to regulations prescribed under that section by the Secretary without regard to section 1373 of this title. Such authorizations may be granted under subchapter IV of this chapter with respect to purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, subject to regulations prescribed under that subchapter by the Secretary without regard to section 1373 of this title. In any event it shall be the immediate goal that the incidental kill or incidental serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate. The Secretary of the Treasury shall ban the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards. For purposes of applying the preceding sentence, the Secretary—

(A) shall insist on reasonable proof from the government of any nation from which fish or fish products will be exported to the United States of the effects on ocean mammals of the commercial fishing technology in use for such fish or fish products exported from such nation to the United States;

(B) in the case of yellowfin tuna harvested with purse seine nets in the eastern tropical Pacific Ocean, and products therefrom, to be exported to the United States, shall require that the government of the exporting nation provide documentary evidence that—

(i)

(I) the tuna or products therefrom were not banned from importation under this paragraph before the effective date of section 4 of the International Dolphin Conservation Program Act; or

(II) the tuna or products therefrom were harvested after the effective date of section 4 of the International Dolphin Conservation Program Act by vessels of a nation which participates in the International Dolphin Conservation Program, and such harvesting nation is either a member of the Inter-American Tropical Tuna Commission or has initiated (and within 6 months thereafter completed) all steps required of applicant nations, in accordance with article V, paragraph 3 of the Convention establishing the Inter-American Tropical Tuna Commission, to become a member of that organization;

(ii) such nation is meeting the obligations of the International Dolphin Conservation Program and the obligations of membership in the Inter-American Tropical Tuna Commission, including all financial obligations; and

(iii) the total dolphin mortality limits, and per-stock per-year dolphin mortality limits permitted for that nation's vessels under the International Dolphin Conservation Program do not exceed the limits determined for 1997, or for any year thereafter, consistent with the objective of progressively reducing dolphin mortality to a level approaching zero through the setting of annual limits and the goal of eliminating dolphin mortality, and requirements of the International Dolphin Conservation Program;

(C) shall not accept such documentary evidence if—

(i) the government of the harvesting nation does not provide directly or authorize the Inter-American Tropical Tuna Commission to release complete and accurate information to the Secretary in a timely manner—

(I) to allow determination of compliance with the International Dolphin Conservation Program; and

(II) for the purposes of tracking and verifying compliance with the minimum requirements established by the Secretary in regulations promulgated under section 1385 (f) of this title; or

(ii) after taking into consideration such information, findings of the Inter-American Tropical Tuna Commission, and any other relevant information, including information that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the International Dolphin Conservation Program, the Secretary, in consultation with the Secretary of State, finds that the harvesting nation is not in compliance with the International Dolphin Conservation Program.

(D) shall require the government of any intermediary nation to certify and provide reasonable proof to the Secretary that it has not imported, within the preceding six months, any yellowfin tuna or yellowfin tuna products that are subject to a direct ban on importation to the United States under subparagraph (B);

(E) shall, six months after importation of yellowfin tuna or tuna products has been banned under this section, certify such fact to the President, which certification shall be deemed to be a certification for the purposes of section 1978 (a) of title 22 for as long as such ban is in effect; and

(F)

(i) except as provided in clause (ii), in the case of fish or products containing fish harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the fish or fish product was not harvested with a large-scale driftnet in the South Pacific Ocean after July 1, 1991, or in any other water of the high seas after January 1, 1993, and

(ii) in the case of tuna or a product containing tuna harvested by a nation whose fishing vessels engage in high seas driftnet fishing, shall require that the government of the exporting nation provide documentary evidence that the tuna or tuna product was not harvested with a large-scale driftnet anywhere on the high seas after July 1, 1991.

For purposes of subparagraph (F), the term "driftnet" has the meaning given such term in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note), except that, until January 1, 1994, the term "driftnet" does not include the use in the northeast Atlantic Ocean of gillnets with a total length not to exceed five kilometers if the use is in accordance with regulations adopted by the European Community

pursuant to the October 28, 1991, decision by the Council of Fisheries Ministers of the Community.

(3)

(A) The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, is authorized and directed, from time to time, having due regard to the distribution, abundance, breeding habits, and times and lines of migratory movements of such marine mammals, to determine when, to what extent, if at all, and by what means, it is compatible with this chapter to waive the requirements of this section so as to allow taking, or importing of any marine mammal, or any marine mammal product, and to adopt suitable regulations, issue permits, and make determinations in accordance with sections 1372, 1373, 1374, and 1381 of this title permitting and governing such taking and importing, in accordance with such determinations: Provided, however, That the Secretary, in making such determinations must be assured that the taking of such marine mammal is in accord with sound principles of resource protection and conservation as provided in the purposes and policies of this chapter: Provided, further, however, That no marine mammal or no marine mammal product may be imported into the United States unless the Secretary certifies that the program for taking marine mammals in the country of origin is consistent with the provisions and policies of this chapter. Products of nations not so certified may not be imported into the United States for any purpose, including processing for exportation.

(B) Except for scientific research purposes, photography for educational or commercial purposes, or enhancing the survival or recovery of a species or stock as provided for in paragraph (1) of this subsection, or as provided for under paragraph (5) of this subsection, during the moratorium no permit may be issued for the taking of any marine mammal which has been designated by the Secretary as depleted, and no importation may be made of any such mammal.

(4)

(A) Except as provided in subparagraphs (B) and (C), the provisions of this chapter shall not apply to the use of measures—

(i) by the owner of fishing gear or catch, or an employee or agent of such owner, to deter a marine mammal from damaging the gear or catch;

(ii) by the owner of other private property, or an agent, bailee, or employee of such owner, to deter a marine mammal from damaging private property;

(iii) by any person, to deter a marine mammal from endangering personal safety; or

(iv) by a government employee, to deter a marine mammal from damaging public property,

so long as such measures do not result in the death or serious injury of a marine mammal.

(B) The Secretary shall, through consultation with appropriate experts, and after notice and opportunity for public comment, publish in the Federal Register a list of guidelines for use in safely deterring marine mammals. In the case of marine mammals listed as endangered species or threatened species under the Endangered Species Act of 1973 [16 U.S.C. 1531 et seq.], the Secretary shall recommend specific measures which may be used to nonlethally deter marine mammals. Actions to deter marine mammals consistent with such guidelines or specific measures shall not be a violation of this chapter.

(C) If the Secretary determines, using the best scientific information available, that certain forms of deterrence have a significant adverse effect on marine mammals, the Secretary may prohibit such deterrent methods, after notice and opportunity for public comment, through regulation under this chapter.

(D) The authority to deter marine mammals pursuant to subparagraph (A) applies to all marine mammals, including all stocks designated as depleted under this chapter.

(5)

(A)

(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specified geographical region, the Secretary shall allow, during periods of not more than five consecutive years each, the incidental, but not intentional, taking by citizens while engaging in that activity within that region of small numbers of marine mammals of a species or population stock if the Secretary, after notice (in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the coastal areas that may be affected by such activity) and opportunity for public comment—

(I) finds that the total of such taking during each five-year (or less) period concerned will have a negligible impact on such species or stock and will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or, in the case of a cooperative agreement under both this chapter and the Whaling Convention Act of 1949 (16 U.S.C. 916 et seq.), pursuant to section 1382 (c) of this title; and

(II) prescribes regulations setting forth—

(aa) permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses; and

(bb) requirements pertaining to the monitoring and reporting of such taking.

(ii) For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), a determination of “least practicable adverse impact on such species or stock” under clause (i)(II)(aa) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(iii) Notwithstanding clause (i), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(B) The Secretary shall withdraw, or suspend for a time certain (either on an individual or class basis, as appropriate) the permission to take marine mammals under subparagraph (A) pursuant to a specified activity within a specified geographical region if the Secretary finds, after notice and opportunity for public comment (as required under subparagraph (A) unless subparagraph (C)(i) applies), that—

(i) the regulations prescribed under subparagraph (A) regarding methods of taking, monitoring, or reporting are not being substantially complied with by a person engaging in such activity; or

(ii) the taking allowed under subparagraph (A) pursuant to one or more activities within one or more regions is having, or may have, more than a negligible impact on the species or stock concerned.

(C)

(i) The requirement for notice and opportunity for public comment in subparagraph (B) shall not apply in the case of a suspension of permission to take if the Secretary determines that an emergency exists which poses a significant risk to the well-being of the species or stock concerned.

(ii) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this paragraph.

(D)

(i) Upon request therefor by citizens of the United States who engage in a specified activity (other than commercial fishing) within a specific geographic region, the Secretary shall authorize, for periods of not more than 1 year, subject to such conditions as the Secretary may specify, the incidental, but not intentional, taking by harassment of small numbers of marine mammals of a species or population stock by such citizens while engaging in that activity within that region if the Secretary finds that such harassment during each period concerned—

(I) will have a negligible impact on such species or stock, and

(II) will not have an unmitigable adverse impact on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section, or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(ii) The authorization for such activity shall prescribe, where applicable—

(I) permissible methods of taking by harassment pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title,

(II) the measures that the Secretary determines are necessary to ensure no unmitigable adverse impact on the availability of the species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title, and

(III) requirements pertaining to the monitoring and reporting of such taking by harassment, including requirements for the independent peer review of proposed monitoring plans or other research proposals where the proposed activity may affect the availability of a species or stock for taking for subsistence uses pursuant to subsection (b) of this section or section 1379 (f) of this title or pursuant to a cooperative agreement under section 1388 of this title.

(iii) The Secretary shall publish a proposed authorization not later than 45 days after receiving an application under this subparagraph and request public comment through notice in the Federal Register, newspapers of general circulation, and appropriate electronic media and to all locally affected communities for a period of 30 days after publication. Not later than 45 days after the close of the public comment period, if the Secretary makes the findings set forth in clause (i), the Secretary shall issue an authorization with appropriate conditions to meet the requirements of clause (ii).

(iv) The Secretary shall modify, suspend, or revoke an authorization if the Secretary finds that the provisions of clauses (i) or (ii) are not being met.

(v) A person conducting an activity for which an authorization has been granted under this subparagraph shall not be subject to the penalties of this chapter for taking by harassment that occurs in compliance with such authorization.

(vi) For a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), a determination of “least practicable adverse impact on such species or stock” under clause (i)(I) shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. Before making the required determination, the Secretary shall consult with the Department of Defense regarding personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

(vii) Notwithstanding clause (iii), for any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note), the Secretary shall publish the notice required by such clause only in the Federal Register.

(E)

(i) During any period of up to 3 consecutive years, the Secretary shall allow the incidental, but not the intentional, taking by persons using vessels of the United States or vessels which have valid fishing permits issued by the Secretary in accordance with section 1824 (b) of this title, while engaging in commercial fishing operations, of marine mammals from a species or stock designated as depleted because of its listing as an endangered species or threatened species under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) if the Secretary, after notice and opportunity for public comment, determines that—

(I) the incidental mortality and serious injury from commercial fisheries will have a negligible impact on such species or stock;

(II) a recovery plan has been developed or is being developed for such species or stock pursuant to the Endangered Species Act of 1973; and

(III) where required under section 1387 of this title, a monitoring program is established under subsection (d) of such section, vessels engaged in such fisheries are registered in accordance with such section, and a take reduction plan has been developed or is being developed for such species or stock.

(ii) Upon a determination by the Secretary that the requirements of clause (i) have been met, the Secretary shall publish in the Federal Register a list of those fisheries for which such determination was made, and, for vessels required to register under section 1387 of this title, shall issue an appropriate permit for each authorization granted under such section to vessels to which this paragraph applies. Vessels engaged in a fishery included in the notice published by the Secretary under this clause which are not required to register under section 1387 of this title shall not be subject to the penalties of this chapter for the incidental taking of marine mammals to which this paragraph applies, so long as the owner or master of such vessel reports any incidental mortality or injury of such marine mammals to the Secretary in accordance with section 1387 of this title.

(iii) If, during the course of the commercial fishing season, the Secretary determines that the level of incidental mortality or serious injury from commercial fisheries for which a determination was made under clause (i) has resulted or is likely to result in an impact that is more than negligible on the endangered or threatened species or stock, the Secretary shall use the emergency authority granted under section 1387 of this title to protect such species or stock, and may modify any permit granted under this paragraph as necessary.

(iv) The Secretary may suspend for a time certain or revoke a permit granted under this subparagraph only if the Secretary determines that the conditions or limitations set forth in such permit are not being complied with. The Secretary may amend or modify, after notice and opportunity for public comment, the list of fisheries published under clause (ii) whenever the Secretary determines there has been a significant change in the information or conditions used to determine such list.

(v) Sections 1373 and 1374 of this title shall not apply to the taking of marine mammals under the authority of this subparagraph.

(vi) This subparagraph shall not govern the incidental taking of California sea otters and shall not be deemed to amend or repeal the Act of November 7, 1986 (Public Law 99–625; 100 Stat. 3500).

(F) Notwithstanding the provisions of this subsection, any authorization affecting a military readiness activity (as defined in section 315(f) of Public Law 107–314; 16 U.S.C. 703 note) shall not be subject to the following requirements:

(i) In subparagraph (A), “within a specified geographical region” and “within that region of small numbers”.

(ii) In subparagraph (B), “within a specified geographical region” and “within one or more regions”.

(iii) In subparagraph (D), “within a specific geographic region”, “of small numbers”, and “within that region”.

(6)

(A) A marine mammal product may be imported into the United States if the product—

(i) was legally possessed and exported by any citizen of the United States in conjunction with travel outside the United States, provided that the product is imported into the United States by the same person upon the termination of travel;

(ii) was acquired outside of the United States as part of a cultural exchange by an Indian, Aleut, or Eskimo residing in Alaska; or

(iii) is owned by a Native inhabitant of Russia, Canada, or Greenland and is imported for noncommercial purposes in conjunction with travel within the United States or as part of a cultural exchange with an Indian, Aleut, or Eskimo residing in Alaska.

(B) For the purposes of this paragraph, the term—

(i) “Native inhabitant of Russia, Canada, or Greenland” means a person residing in Russia, Canada, or Greenland who is related by blood, is a member of the same clan or ethnological grouping, or shares a common heritage with an Indian, Aleut, or Eskimo residing in Alaska; and

(ii) “cultural exchange” means the sharing or exchange of ideas, information, gifts, clothing, or handicrafts between an Indian, Aleut, or Eskimo residing in Alaska and a Native inhabitant of Russia, Canada, or Greenland, including rendering of raw marine mammal parts as part of such exchange into clothing or handicrafts through carving, painting, sewing, or decorating.

(b) Exemptions for Alaskan natives

Except as provided in section 1379 of this title, the provisions of this chapter shall not apply with respect to the taking of any marine mammal by any Indian, Aleut, or Eskimo who resides in Alaska and who dwells on the coast of the North Pacific Ocean or the Arctic Ocean if such taking—

(1) is for subsistence purposes; or

(2) is done for purposes of creating and selling authentic native articles of handicrafts and clothing: Provided, That only authentic native articles of handicrafts and clothing may be sold in interstate commerce: And provided further, That any edible portion of marine mammals may be sold in native villages and towns in Alaska or for native consumption. For the purposes of this subsection, the term “authentic native articles of handicrafts and clothing” means items composed wholly or in some significant respect of natural materials, and which are produced, decorated, or fashioned in the exercise of traditional native handicrafts without the use of pantographs, multiple carvers, or other mass copying devices. Traditional native handicrafts include, but are not limited to weaving, carving, stitching, sewing, lacing, beading, drawing and painting; and

(3) in each case, is not accomplished in a wasteful manner.

Notwithstanding the preceding provisions of this subsection, when, under this chapter, the Secretary determines any species or stock of marine mammal subject to taking by Indians, Aleuts, or Eskimos to be depleted, he may prescribe regulations upon the taking of such marine mammals by any Indian, Aleut, or Eskimo described in this subsection. Such regulations may be established with reference to species or stocks, geographical description of the area included, the season for taking, or any other factors related to the reason for establishing such regulations and consistent with the purposes of this chapter. Such regulations shall be prescribed after notice and hearing required by section 1373 of this title and shall be removed as soon as the Secretary determines that the need for their imposition has disappeared. In promulgating any regulation or making any assessment pursuant to a hearing or proceeding under this subsection or section 1386 (b)(2) of this title, or in making any determination of depletion under this subsection or finding regarding unmitigable adverse impacts under subsection (a)(5) of this section that affects stocks or persons to which this subsection applies, the Secretary shall be responsible for demonstrating that such regulation, assessment, determination, or finding is supported by substantial evidence on the basis of the record as a whole. The preceding sentence shall only be applicable in an action brought by one or more Alaska Native organizations representing persons to which this subsection applies.

(c) Taking in defense of self or others

It shall not be a violation of this chapter to take a marine mammal if such taking is imminently necessary in self-defense or to save the life of a person in immediate danger, and such taking is reported to the Secretary within 48 hours. The Secretary may seize and dispose of any carcass.

(d) Good Samaritan exemption

It shall not be a violation of this chapter to take a marine mammal if—

(1) such taking is imminently necessary to avoid serious injury, additional injury, or death to a marine mammal entangled in fishing gear or debris;

(2) reasonable care is taken to ensure the safe release of the marine mammal, taking into consideration the equipment, expertise, and conditions at hand;

(3) reasonable care is exercised to prevent any further injury to the marine mammal; and

(4) such taking is reported to the Secretary within 48 hours.

(e) Chapter not to apply to incidental takings by United States citizens employed on foreign vessels outside United States EEZ

The provisions of this chapter shall not apply to a citizen of the United States who incidentally takes any marine mammal during fishing operations outside the United States exclusive economic zone (as defined in section 1802 of this title) when employed on a foreign fishing vessel of a harvesting nation which is in compliance with the International Dolphin Conservation Program.

(f) Exemption of actions necessary for national defense

(1) The Secretary of Defense, after conferring with the Secretary of Commerce, the Secretary of the Interior, or both, as appropriate, may exempt any action or category of actions undertaken by the Department of Defense or its components from compliance with any requirement of this chapter, if the Secretary determines that it is necessary for national defense.

(2) An exemption granted under this subsection—

(A) subject to subparagraph (B), shall be effective for a period specified by the Secretary of Defense; and

(B) shall not be effective for more than 2 years.

(3)

(A) The Secretary of Defense may issue additional exemptions under this subsection for the same action or category of actions, after—

(i) conferring with the Secretary of Commerce, the Secretary of the Interior, or both as appropriate; and

(ii) making a new determination that the additional exemption is necessary for national defense.

(B) Each additional exemption under this paragraph shall be effective for a period specified by the Secretary of Defense, of not more than 2 years.

(4) Not later than 30 days after issuing an exemption under paragraph (1) or an additional exemption under paragraph (3), the Secretary of Defense shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate notice describing the exemption and the reasons therefor. The notice may be provided in classified form if the Secretary of Defense determines that use of the classified form is necessary for reasons of national security.

TITLE 16—CONSERVATION

CHAPTER 31—MARINE MAMMAL PROTECTION

SUBCHAPTER II—CONSERVATION AND PROTECTION OF MARINE MAMMALS

§ 1373. Regulations on taking of marine mammals

(a) Necessity and appropriateness

The Secretary, on the basis of the best scientific evidence available and in consultation with the Marine Mammal Commission, shall prescribe such regulations with respect to the taking and importing of animals from each species of marine mammal (including regulations on the taking and importing of individuals within population stocks) as he deems necessary and appropriate to insure that such taking will not be to the disadvantage of those species and population stocks and will be consistent with the purposes and policies set forth in section 1361 of this title.

(b) Factors considered in prescribing regulations

In prescribing such regulations, the Secretary shall give full consideration to all factors which may affect the extent to which such animals may be taken or imported, including but not limited to the effect of such regulations on—

- (1) existing and future levels of marine mammal species and population stocks;
- (2) existing international treaty and agreement obligations of the United States;
- (3) the marine ecosystem and related environmental considerations;
- (4) the conservation, development, and utilization of fishery resources; and
- (5) the economic and technological feasibility of implementation.

(c) Allowable restrictions

The regulations prescribed under subsection (a) of this section for any species or population stock of marine mammal may include, but are not limited to, restrictions with respect to—

- (1) the number of animals which may be taken or imported in any calendar year pursuant to permits issued under section 1374 of this title;
- (2) the age, size, or sex (or any combination of the foregoing) of animals which may be taken or imported, whether or not a quota prescribed under paragraph (1) of this subsection applies with respect to such animals;
- (3) the season or other period of time within which animals may be taken or imported;
- (4) the manner and locations in which animals may be taken or imported; and
- (5) fishing techniques which have been found to cause undue fatalities to any species of marine mammal in a fishery.

(d) Procedure

Regulations prescribed to carry out this section with respect to any species or stock of marine mammals must be made on the record after opportunity for an agency hearing on both the Secretary's determination to waive the moratorium pursuant to section 1371 (a)(3)(A) of this title and on such regulations, except that, in addition to any other requirements, imposed by law with respect to agency rulemaking, the Secretary shall publish and make available to the public either before or concurrent with the Publication of notice in the Federal Register of his intention to prescribe regulations under this section—

- (1) a statement of the estimated existing levels of the species and population stocks of the marine mammal concerned;
- (2) a statement of the expected impact of the proposed regulations on the optimum sustainable population of such species or population stock;
- (3) a statement describing the evidence before the Secretary upon which he proposes to base such regulations; and
- (4) any studies made by or for the Secretary or any recommendations made by or for the Secretary or the Marine Mammal Commission which relate to the establishment of such regulations.

(e) Periodic review

Any regulation prescribed pursuant to this section shall be periodically reviewed, and may be modified from time to time in such manner as the Secretary deems consistent with and necessary to carry out the purposes of this chapter.

(f) Report to Congress

Within six months after the effective date of this chapter and every twelve months thereafter, the Secretary shall report to the public through publication in the Federal Register and to the Congress on the current status of all marine mammal species and population stocks subject to the provisions of this chapter. His report shall describe those actions taken and those measures believed necessary, including where appropriate, the issuance of permits pursuant to this subchapter to assure the well-being of such marine mammals.

TITLE 16—CONSERVATION

CHAPTER 31—MARINE MAMMAL PROTECTION

SUBCHAPTER II—CONSERVATION AND PROTECTION OF MARINE MAMMALS

§ 1374. Permits

(a) Issuance

The Secretary may issue permits which authorize the taking or importation of any marine mammal. Permits for the incidental taking of marine mammals in the course of commercial fishing operations may only be issued as specifically provided for in sections ⁽¹⁾ 1371(a)(5) or 1416 of this title, or subsection (h) of this section.

(b) Requisite provisions

Any permit issued under this section shall—

(1) be consistent with any applicable regulation established by the Secretary under section 1373 of this title, and

(2) specify—

(A) the number and kind of animals which are authorized to be taken or imported,

(B) the location and manner (which manner must be determined by the Secretary to be humane) in which they may be taken, or from which they may be imported,

(C) the period during which the permit is valid, and

(D) any other terms or conditions which the Secretary deems appropriate.

In any case in which an application for a permit cites as a reason for the proposed taking the overpopulation of a particular species or population stock, the Secretary shall first consider whether or not it would be more desirable to transplant a number of animals (but not to exceed the number requested for taking in the application) of that species or stock to a location not then inhabited by such species or stock but previously inhabited by such species or stock.

(c) Importation for scientific research, public display, or enhancing survival or recovery of species or stock

(1) Any permit issued by the Secretary which authorizes the taking or importation of a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall specify, in addition to the conditions required by subsection (b) of this section, the methods of capture, supervision, care, and transportation which must be observed pursuant to such taking or importation. Any person authorized to take or import a marine mammal for purposes of scientific research, public display, or enhancing the survival or recovery of a species or stock shall furnish to the Secretary a report on all activities carried out by him pursuant to that authority.

(2)

(A) A permit may be issued to take or import a marine mammal for the purpose of public display only to a person which the Secretary determines—

(i) offers a program for education or conservation purposes that is based on professionally recognized standards of the public display community;

(ii) is registered or holds a license issued under 7 U.S.C. 2131 et seq.; and

(iii) maintains facilities for the public display of marine mammals that are open to the public on a regularly scheduled basis and that access to such facilities is not limited or restricted other than by charging of an admission fee.

(B) A permit under this paragraph shall grant to the person to which it is issued the right, without obtaining any additional permit or authorization under this chapter, to—

(i) take, import, purchase, offer to purchase, possess, or transport the marine mammal that is the subject of the permit; and

(ii) sell, export, or otherwise transfer possession of the marine mammal, or offer to sell, export, or otherwise transfer possession of the marine mammal—

(1) for the purpose of public display, to a person that meets the requirements of clauses (i), (ii), and (iii) of subparagraph (A);

(11) for the purpose of scientific research, to a person that meets the requirements of paragraph (3); or

(111) for the purpose of enhancing the survival or recovery of a species or stock, to a person that meets the requirements of paragraph (4).

(C) A person to which a marine mammal is sold or exported or to which possession of a marine mammal is otherwise transferred under the authority of subparagraph (B) shall have the rights and responsibilities described in subparagraph (B) with respect to the marine mammal without obtaining any additional permit or authorization under this chapter. Such responsibilities shall be limited to—

(i) for the purpose of public display, the responsibility to meet the requirements of clauses (i), (ii), and (iii) of subparagraph (A),

(ii) for the purpose of scientific research, the responsibility to meet the requirements of paragraph (3), and

(iii) for the purpose of enhancing the survival or recovery of a species or stock, the responsibility to meet the requirements of paragraph (4).

(D) If the Secretary—

(i) finds in concurrence with the Secretary of Agriculture, that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(ii) and is not reasonably likely to meet those requirements in the near future, or

(ii) finds that a person that holds a permit under this paragraph for a marine mammal, or a person exercising rights under subparagraph (C), no longer meets the requirements of subparagraph (A)(i) or (iii) and is not reasonably likely to meet those requirements in the near future,

the Secretary may revoke the permit in accordance with subsection (e) of this section, seize the marine mammal, or cooperate with other persons authorized to hold marine mammals under this chapter for disposition of the marine mammal. The Secretary may recover from the person expenses incurred by the Secretary for that seizure.

(E) No marine mammal held pursuant to a permit issued under subparagraph (A), or by a person exercising rights under subparagraph (C), may be sold, purchased, exported, or transported unless the Secretary is notified of such action no later than 15 days before such action, and such action is for

purposes of public display, scientific research, or enhancing the survival or recovery of a species or stock. The Secretary may only require the notification to include the information required for the inventory established under paragraph (10).

(3)

(A) The Secretary may issue a permit under this paragraph for scientific research purposes to an applicant which submits with its permit application information indicating that the taking is required to further a bona fide scientific purpose. The Secretary may issue a permit under this paragraph before the end of the public review and comment period required under subsection (d)(2) of this section if delaying issuance of the permit could result in injury to a species, stock, or individual, or in loss of unique research opportunities.

(B) No permit issued for purposes of scientific research shall authorize the lethal taking of a marine mammal unless the applicant demonstrates that a nonlethal method of conducting the research is not feasible. The Secretary shall not issue a permit for research which involves the lethal taking of a marine mammal from a species or stock that is depleted, unless the Secretary determines that the results of such research will directly benefit that species or stock, or that such research fulfills a critically important research need.

(C) Not later than 120 days after April 30, 1994, the Secretary shall issue a general authorization and implementing regulations allowing bona fide scientific research that may result only in taking by Level B harassment of a marine mammal. Such authorization shall apply to persons which submit, by 60 days before commencement of such research, a letter of intent via certified mail to the Secretary containing the following:

(i) The species or stocks of marine mammals which may be harassed.

(ii) The geographic location of the research.

(iii) The period of time over which the research will be conducted.

(iv) The purpose of the research, including a description of how the definition of bona fide research as established under this chapter would apply.

(v) Methods to be used to conduct the research.

Not later than 30 days after receipt of a letter of intent to conduct scientific research under the general authorization, the Secretary shall issue a letter to the applicant confirming that the general authorization applies, or, if the proposed research is likely to result in the taking (including Level A harassment) of a marine mammal, shall notify the applicant that subparagraph (A) applies.

(4)

(A) A permit may be issued for enhancing the survival or recovery of a species or stock only with respect to a species or stock for which the Secretary, after consultation with the Marine Mammal Commission and after notice and opportunity for public comment, has first determined that—

(i) taking or importation is likely to contribute significantly to maintaining or increasing distribution or numbers necessary to ensure the survival or recovery of the species or stock; and

(ii) taking or importation is consistent

(1) with any conservation plan adopted by the Secretary under section 1383b (b) of this title or any recovery plan developed under section 1533 (f) of this title for the species or stock, or

(11) if there is no conservation or recovery plan in place, with the Secretary's evaluation of the actions required to enhance the survival or recovery of the species or stock in light of the factors that would be addressed in a conservation plan or a recovery plan.

(B) A permit issued in accordance with this paragraph may allow the captive maintenance of a marine mammal from a depleted species or stock only if the Secretary—

(i) determines that captive maintenance is likely to contribute to the survival or recovery of the species or stock by maintaining a viable gene pool, increasing productivity, providing biological information, or establishing animal reserves;

(ii) determines that the expected benefit to the affected species or stock outweighs the expected benefit of alternatives which do not require removal of animals from the wild; and

(iii) requires that the marine mammal or its progeny be returned to the natural habitat of the species or stock as soon as feasible, consistent with the objectives of any applicable conservation plan or recovery plan, or of any evaluation by the Secretary under subparagraph (A).

The Secretary may allow the public display of such a marine mammal only if the Secretary determines that such display is incidental to the authorized maintenance and will not interfere with the attainment of the survival or recovery objectives.

(5)

(A) The Secretary may issue a permit for the importation of polar bear parts (other than internal organs) taken in sport hunts in Canada to an applicant which submits with its permit application proof that the polar bear was legally harvested in Canada by the applicant. Such a permit shall be issued if the Secretary, in consultation with the Marine Mammal Commission and after notice and opportunity for public comment, finds that—

(i) Canada has a monitored and enforced sport hunting program consistent with the purposes of the Agreement on the Conservation of Polar Bears;

(ii) Canada has a sport hunting program based on scientifically sound quotas ensuring the maintenance of the affected population stock at a sustainable level;

(iii) the export and subsequent import are consistent with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora and other international agreements and conventions; and

(iv) the export and subsequent import are not likely to contribute to illegal trade in bear parts.

(B) The Secretary shall establish and charge a reasonable fee for permits issued under this paragraph. All fees collected under this paragraph shall be available to the Secretary until expended for use in developing and implementing cooperative research and management programs for the conservation of polar bears in Alaska and Russia pursuant to section 1383 (d) of this title.

(C)

(i) The Secretary shall undertake a scientific review of the impact of permits issued under this paragraph on the polar bear population stocks in Canada within 2 years after April 30, 1994. The Secretary shall provide an opportunity for public comment during the course of such review, and shall include a response to such public comment in the final report on such review.

(ii) The Secretary shall not issue permits under this paragraph after September 30, 1996, if the Secretary determines, based on the scientific review, that the issuance of permits under this paragraph is having a significant adverse impact on the polar bear population stocks in Canada. The Secretary may review such determination annually thereafter, in light of the best scientific information available, and shall complete the review not later than January 31 in any year a review is undertaken. The Secretary may issue permits under this paragraph whenever the Secretary determines, on the basis

of such annual review, that the issuance of permits under this paragraph is not having a significant adverse impact on the polar bear population stocks in Canada.

(D) The Secretary of the Interior shall, expeditiously after the expiration of the applicable 30 day period under subsection (d)(2) of this section, issue a permit for the importation of polar bear parts (other than internal organs) from polar bears taken in sport hunts in Canada before February 18, 1997, to each applicant who submits, with the permit application, proof that the polar bear was legally harvested in Canada by the applicant. The Secretary shall issue such permits without regard to the provisions of subparagraphs (A) and (C)(ii) of this paragraph, subsection (d)(3) of this section, and sections 1371 and 1372 of this title. This subparagraph shall not apply to polar bear parts that were imported before June 12, 1997.

(6) A permit may be issued for photography for educational or commercial purposes involving marine mammals in the wild only to an applicant which submits with its permit application information indicating that the taking will be limited to Level B harassment, and the manner in which the products of such activities will be made available to the public.

(7) Upon request by a person for a permit under paragraph (2), (3), or (4) for a marine mammal which is in the possession of any person authorized to possess it under this chapter and which is determined under guidance under section 1421a (a) of this title not to be releasable to the wild, the Secretary shall issue the permit to the person requesting the permit if that person—

(A) meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A), in the case of a request for a permit under paragraph (2);

(B) meets the requirements of paragraph (3), in the case of a request for a permit under that paragraph; or

(C) meets the requirements of paragraph (4), in the case of a request for a permit under that paragraph.

(8)

(A) No additional permit or authorization shall be required to possess, sell, purchase, transport, export, or offer to sell or purchase the progeny of marine mammals taken or imported under this subsection, if such possession, sale, purchase, transport, export, or offer to sell or purchase is—

(i) for the purpose of public display, and by or to, respectively, a person which meets the requirements of clauses (i), (ii), and (iii) of paragraph (2)(A);

(ii) for the purpose of scientific research, and by or to, respectively, a person which meets the requirements of paragraph (3); or

(iii) for the purpose of enhancing the survival or recovery of a species or stock, and by or to, respectively, a person which meets the requirements of paragraph (4).

(B)

(i) A person which has a permit under paragraph (2), or a person exercising rights under paragraph (2)(C), which has possession of a marine mammal that gives birth to progeny shall—

(I) notify the Secretary of the birth of such progeny within 30 days after the date of birth; and

(II) notify the Secretary of the sale, purchase, or transport of such progeny no later than 15 days before such action.

(ii) The Secretary may only require notification under clause (i) to include the information required for the inventory established under paragraph (10).

(C) Any progeny of a marine mammal born in captivity before April 30, 1994, and held in captivity for the purpose of public display shall be treated as though born after April 30, 1994.

(9) No marine mammal may be exported for the purpose of public display, scientific research, or enhancing the survival or recovery of a species or stock unless the receiving facility meets standards that are comparable to the requirements that a person must meet to receive a permit under this subsection for that purpose.

(10) The Secretary shall establish and maintain an inventory of all marine mammals possessed pursuant to permits issued under paragraph (2)(A), by persons exercising rights under paragraph (2)(C), and all progeny of such marine mammals. The inventory shall contain, for each marine mammal, only the following information which shall be provided by a person holding a marine mammal under this chapter:

(A) The name of the marine mammal or other identification.

(B) The sex of the marine mammal.

(C) The estimated or actual birth date of the marine mammal.

(D) The date of acquisition or disposition of the marine mammal by the permit holder.

(E) The source from whom the marine mammal was acquired including the location of the take from the wild, if applicable.

(F) If the marine mammal is transferred, the name of the recipient.

(G) A notation if the animal was acquired as the result of a stranding.

(H) The date of death of the marine mammal and the cause of death when determined.

(d) Application procedures; notice; hearing; review

(1) The Secretary shall prescribe such procedures as are necessary to carry out this section, including the form and manner in which application for permits may be made.

(2) The Secretary shall publish notice in the Federal Register of each application made for a permit under this section. Such notice shall invite the submission from interested parties, within thirty days after the date of the notice, of written data or views, with respect to the taking or importation proposed in such application.

(3) The applicant for any permit under this section must demonstrate to the Secretary that the taking or importation of any marine mammal under such permit will be consistent with the purposes of this chapter and the applicable regulations established under section 1373 of this title.

(4) If within thirty days after the date of publication of notice pursuant to paragraph (2) of this subsection with respect to any application for a permit any interested party or parties request a hearing in connection therewith, the Secretary may, within sixty days following such date of publication, afford to such party or parties an opportunity for such a hearing.

(5) As soon as practicable (but not later than thirty days) after the close of the hearing or, if no hearing is held, after the last day on which data, or views, may be submitted pursuant to paragraph (2) of this subsection, the Secretary shall

(A) issue a permit containing such terms and conditions as he deems appropriate, or

(B) shall deny issuance of a permit. Notice of the decision of the Secretary to issue or to deny any permit under this paragraph must be published in the Federal Register within ten days after the date of issuance or denial.

(6) Any applicant for a permit, or any party opposed to such permit, may obtain judicial review of the terms and conditions of any permit issued by the Secretary under this section or of his refusal to issue such a permit. Such review, which shall be pursuant to chapter 7 of title 5, may be initiated by filing a petition for review in the United States district court for the district wherein the applicant for a permit resides, or has his principal place of business, or in the United States District Court for the District of Columbia, within sixty days after the date on which such permit is issued or denied.

(e) Modification, suspension, and revocation

(1) The Secretary may modify, suspend, or revoke in whole or in part any permit issued by him under this section—

(A) in order to make any such permit consistent with any change made after the date of issuance of such permit with respect to any applicable regulation prescribed under section 1373 of this title,

(B) in any case in which a violation of the terms and conditions of the permit is found, or

(C) if, in the case of a permit under subsection (c)(5) of this section authorizing importation of polar bear parts, the Secretary, in consultation with the appropriate authority in Canada, determines that the sustainability of Canada's polar bear population stocks are being adversely affected or that sport hunting may be having a detrimental effect on maintaining polar bear population stocks throughout their range.

(2) Whenever the Secretary shall propose any modification, suspension, or revocation of a permit under this subsection, the permittee shall be afforded opportunity, after due notice, for a hearing by the Secretary with respect to such proposed modification, suspension, or revocation. Such proposed action by the Secretary shall not take effect until a decision is issued by him after such hearing. Any action taken by the Secretary after such a hearing is subject to judicial review on the same basis as is any action taken by him with respect to a permit application under paragraph (5) of subsection (d) of this section.

(3) Notice of the modification, suspension, or revocation of any permit by the Secretary shall be published in the Federal Register within ten days from the date of the Secretary's decision.

(f) Possession of permit by issuee or his agent

Any permit issued under this section must be in the possession of the person to whom it is issued (or an agent of such person) during—

(1) the time of the authorized or taking importation;

(2) the period of any transit of such person or agent which is incident to such taking or importation; and

(3) any other time while any marine mammal taken or imported under a such permit is in the possession of such person or agent.

A duplicate copy of the issued permit must be physically attached to the container, package, enclosure, or other means of containment, in which the marine mammal is placed for purposes of storage, transit, supervision, or care.

(g) Fees

The Secretary shall establish and charge a reasonable fee for permits issued under this section.

(h) General permits

(1) Consistent with the regulations prescribed pursuant to section 1373 of this title and to the requirements of section 1371 of this title, the Secretary may issue an annual permit to a United States purse seine fishing vessel for the taking of such marine mammals, and shall issue regulations to cover the use of any such annual permits.

(2) Such annual permits for the incidental taking of marine mammals in the course of commercial purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean shall be governed by section 1416 of this title, subject to the regulations issued pursuant to section 1413 of this title.

TITLE 16—CONSERVATION

CHAPTER 31—MARINE MAMMAL PROTECTION

SUBCHAPTER II—CONSERVATION AND PROTECTION OF MARINE MAMMALS

§ 1379. Transfer of management authority

(a) State enforcement of State laws or regulations prohibited without transfer to State of management authority by Secretary

No State may enforce, or attempt to enforce, any State law or regulation relating to the taking of any species (which term for purposes of this section includes any population stock) of marine mammal within the State unless the Secretary has transferred authority for the conservation and management of that species (hereinafter referred to in this section as "management authority") to the State under subsection (b)(1) of this section.

(b) Findings prerequisite to transfer of authority; State program; implementation

(1) Subject to paragraph (2) and subsection (f) of this section, the Secretary shall transfer management authority for a species of marine mammal to a State if the Secretary finds, after notice and opportunity for public comment, that the State has developed and will implement a program for the conservation and management of the species that—

(A) is consistent with the purposes, policies, and goals of this chapter and with international treaty obligations;

(B) requires that all taking of the species be humane;

(C) does not permit the taking of the species unless and until—

(i) the State has determined, under a process consistent with the standards set forth in subsection (c) of this section—

(I) that the species is at its optimum sustainable population (hereinafter in this section referred to as "OSP"), and

(II) the maximum number of animals of that species that may be taken without reducing the species below its OSP, and

(ii) the determination required under clause (i) is final and implemented under State law, and, if a cooperative allocation agreement for the species is required under subsection (d)(1) of this section, such as agreement is implemented;

(D) does not permit the taking of a number of animals of the species that exceeds the maximum number determined pursuant to subparagraph (C)(i)(II), and, in the case of taking for subsistence uses (as defined in subsection (f)(2) of this section), does not permit the taking of a number of animals that would be inconsistent with the maintenance of the species at its OSP;

(E) does not permit the taking of the species for scientific research, public display, or enhancing the survival or recovery of a species or stock, except for taking for such purposes that is undertaken by, or on behalf of, the State;

(F) provides procedures for acquiring data, and evaluating such data and other new evidence, relating to the OSP of the species, and the maximum take that would maintain the species at the level, and, if required on the basis of such evaluation, for amending determinations under subparagraph (C)(i);

(G) provides procedures for the resolution of differences between the State and the Secretary that might arise during the development of a cooperative allocation agreement under subsection (d)(1) of this section; and

(H) provides for the submission of an annual report to the Secretary regarding the administration of the program during the reporting period.

(2) During the period between the transfer of management authority for a species to a State under paragraph (1) and the time at which the implementation requirements under paragraph (1)(C)(ii) are complied with—

(A) the State program shall not apply with respect to the taking of the species within the State for any purpose, or under any condition, provided for under section 1371 of this title; and

(B) the Secretary shall continue to regulate, under this subchapter, all takings of the species within the State.

(3) After the determination required under paragraph (1)(C)(i) regarding a species is final and implemented under State law and after a cooperative allocation agreement described in subsection (d)(1) of this section, if required, is implemented for such species—

(A) such determination shall be treated, for purposes of applying this subchapter beyond the territory of the State, as a determination made in accordance with section 1373 of this title and as an applicable waiver under section 1371 (a)(3) of this title;

(B) the Secretary shall regulate, without regard to this section other than the allocations specified under such an agreement, the taking of the species—

(i) incidentally in the course of commercial fishing operations (whether provided for under section 1371 (a)(2) or (4) of this title), or in the course of other specified activities provided for under section 1371 (a)(5) of this title, in the zone described in section 1362 (14)(B) ^[1] of this title, and

(ii) for scientific research, public display, or enhancing the survival or recovery of a species or stock (other than by, or on behalf of, the State), except that any taking authorized under a permit issued pursuant to section 1371 (a)(1) of this title after October 9, 1981, allowing the removal of live animals from habitat within the State shall not be effective if the State agency disapproves, on or before the date of issuance of the permit, such taking as being inconsistent with the State program; and

(C) section 1371 (b) of this title shall not apply.

(c) Standards with which State process must comply

The State process required under subsection (b)(1)(C) of this section must comply with the following standards:

(1) The State agency with management authority for the species (hereinafter in this section referred to as the "State agency") must make an initial determination regarding the factors described in clause (i) of that subsection. The State agency must identify, and make available to the public under reasonable circumstances, the documentation supporting such initial determination. Unless request for a hearing under paragraph (2) regarding the initial determination is timely made, the initial determination shall be treated as final under State law.

(2) The State agency shall provide opportunity, at the request of any interested party, for a hearing with respect to the initial determination made by it under paragraph (1) at which interested parties may—

(A) present oral and written evidence in support of or against such determination; and

(B) cross-examine persons presenting evidence at the hearing.

The State agency must give public notice of the hearing and make available to the public within a reasonable time before commencing the hearing a list of the witnesses for the State and a general description of the documentation and other evidence that will be relied upon by such witnesses.

(3) The State agency, solely on the basis of the record developed at a hearing held pursuant to paragraph (2), must make a decision regarding its initial determination under paragraph (1) and shall include with the record a statement of the findings and conclusions, and the reason or basis therefor, on all material issues.

(4) Opportunity for judicial review of the decision made by the State agency on the record under paragraph (3), under scope of review equivalent to that provided for in section 706 (2)(A) through (E) of title 5, must be available under State law. The Secretary may not initiate judicial review of any such decision.

(d) Cooperative allocation agreements

(1) If the range of a species with respect to which a determination under paragraph (1)(C)(i) of subsection (b) of this section is made extends beyond the territorial waters of the State, the State agency and the Secretary (who shall first coordinate with the Marine Mammal Commission and the appropriate Regional Fishery Management Council established under section 1852 of this title) shall enter into a cooperative allocation agreement providing procedures for allocating, on a timely basis, such of the number of animals, as determined under paragraph (1)(C)(i)(II) of subsection (b) of this section, as may be appropriate with priority of allocation being given firstly to taking for subsistence uses in the case of the State of Alaska, and secondly to taking for purposes provided for under section 1371 (a) of this title within the zone described in section 1362 (14)(B) ^[2] of this title.

(2) If the State agency requests the Secretary to regulate the taking of a species to which paragraph (1) applies within the zone described in section 1362 (14)(B) ^[2] of this title for subsistence uses or for hunting, or both, in a manner consistent with the regulation by the State agency of such taking within the State, the Secretary shall adopt, and enforce within such zone, such of the State agency's regulatory provisions as the Secretary considers to be consistent with his administration of section 1371 (a) of this title within such zone. The Secretary shall adopt such provisions through the issuance of regulations under section 553 of title 5, and with respect to such issuance the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], the Paperwork Reduction Act, ^[2] Executive Order Numbered 12291, dated February 17, 1981, and the thirty-day notice requirement in subsection (d) of such section 553 shall not apply. For purposes of sections 1375, 1376, and 1377 of this title, such regulations shall be treated as having been issued under this subchapter.

(e) Revocation of transfer of management authority

(1) Subject to paragraph (2), the Secretary shall revoke, after opportunity for a hearing, any transfer of management authority made to a State under subsection (b)(1) of this section if the Secretary finds that the State program for the conservation and management of the species concerned is not being implemented, or is being implemented in a manner inconsistent with the provisions of this section or the provisions of the program. The Secretary shall also establish a procedure for the voluntary return by a State to the Secretary of species management authority that was previously transferred to the State under subsection (b)(1) of this section.

(2)

(A) The Secretary may not revoke a transfer of management authority under paragraph (1) unless—

(i) the Secretary provides to the State a written notice of intent to revoke together with a statement, in detail, of those actions, or failures to act, on which such intent is based; and

(ii) during the ninety-day period after the date of the notice of intent to revoke—

(I) the Secretary provides opportunity for consultation between him and the State concerning such State actions or failures to act and the remedial measures that should be taken by the State, and

(II) the State does not take such remedial measures as are necessary, in the judgment of the Secretary, to bring its conservation and management program, or the administration or enforcement of the program, into compliance with the provisions of this section.

(B) When a revocation by the Secretary of a transfer of management authority to a State becomes final, or the State voluntarily returns management authority to the Secretary, the Secretary shall regulate the taking, and provide for the conservation and management, of the species within the State in accordance with the provisions of this chapter (and in the case of Alaskan Natives, section 1371 (b) of this title and subsection (i) of this section shall apply upon such revocation or return of management authority).

(f) Transfer of management authority to State of Alaska

(1) The Secretary may not transfer management authority to the State of Alaska under subsection (b)(1) of this section for any species of marine mammal unless—

(A) the State has adopted and will implement a statute and regulations that insure that the taking of the species for subsistence uses—

(i) is accomplished in a nonwasteful manner,

(ii) will be the priority consumptive use of the species, and

(iii) if required to be restricted, such restriction will be based upon—

(I) the customary and direct dependence upon the species as the mainstay of livelihood,

(II) local residency, and

(III) the availability of alternative resources; and

(B) the State has adopted a statute or regulation that requires that any consumptive use of marine mammal species, other than for subsistence uses, will be authorized during a regulatory year only if the appropriate agency first makes findings, based on an administrative record before it, that—

(i) such use will have no significant adverse impact upon subsistence uses of the species, and

(ii) the regulation of such use, including, but not limited to, licensing of marine mammal hunting guides and the assignment of guiding areas, will, to the maximum extent practicable, provide economic opportunities for the residents of the rural coastal villages of Alaska who engage in subsistence uses of that species.

(2) For purposes of paragraph (1), the term “subsistence uses” means the customary and traditional uses by rural Alaska residents of marine mammals for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of marine mammals taken for personal or family consumption; and for barter, or sharing for personal or family consumption. As used in this paragraph—

(A) The term “family” means all persons related by blood, marriage, or adoption, or any person living within a household on a permanent basis.

(B) The term “barter” means the exchange of marine mammals or their parts, taken for subsistence uses—

(i) for other wildlife or fish or their parts, or

(ii) for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature.

(g) Environmental impact statement not required

Neither the transfer of management authority to a State under subsection (b)(1) of this section, nor the revocation or voluntary return of such authority under subsection (e) of this section, shall be deemed to be an action for which an environmental impact statement is required under section 4332 of title 42.

(h) Taking of marine mammals as part of official duties

(1) Nothing in this subchapter or subchapter V of this chapter shall prevent a Federal, State, or local government official or employee or a person designated under section 1382 (c) of this title from taking, in the course of his or her duties as an official, employee, or designee, a marine mammal in a humane manner (including euthanasia) if such taking is for—

(A) the protection or welfare of the mammal,

(B) the protection of the public health and welfare, or

(C) the nonlethal removal of nuisance animals.

(2) Nothing in this subchapter shall prevent the Secretary or a person designated under section 1382 (c) of this title from importing a marine mammal into the United States if such importation is necessary to render medical treatment that is not otherwise available.

(3) In any case in which it is feasible to return to its natural habitat a marine mammal taken or imported under circumstances described in this subsection, steps to achieve that result shall be taken.

(i) Regulations covering taking of marine mammals by Alaskan natives

The Secretary may (after providing notice thereof in the Federal Register and in newspapers of general circulation, and through appropriate electronic media, in the affected area and providing opportunity for a hearing thereon in such area) prescribe regulations requiring the marking, tagging, and reporting of animals taken pursuant to section 1371 (b) of this title.

(j) Grants to develop or administer State conservation and management programs

The Secretary may make grants to States to assist them—

(1) in developing programs, to be submitted for approval under subsection (b) of this section, for the conservation and management of species of marine mammals; and

(2) in administering such programs if management authority for such species is transferred to the State under such subsection.

Grants made under this subsection may not exceed 50 per centum of the costs of developing a State program before Secretarial approval, or of administering the program thereafter.

(k) Delegation of administration and enforcement to States

The Secretary is authorized and directed to enter into cooperative arrangements with the appropriate officials of any State for the delegation to such State of the administration and enforcement of this subchapter: Provided, That any such arrangement shall contain such provisions as the Secretary deems appropriate to insure that the purposes and policies of this chapter will be carried out.

(l) Authorization of appropriations

(1) There are authorized to be appropriated to the Department of the Interior, for the purposes of carrying out this section, not to exceed \$400,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(2) There are authorized to be appropriated to the Department of Commerce, for the purposes of carrying out this section, not to exceed \$225,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

Title 50: Wildlife and Fisheries

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Subpart C—General Exceptions

§ 216.23 Native exceptions.

(a) *Taking.* Notwithstanding the prohibitions of subpart B of this part 216, but subject to the restrictions contained in this section, any Indian, Aleut, or Eskimo who resides on the coast of the North Pacific Ocean or the Arctic Ocean may take any marine mammal without a permit, if such taking is:

- (1) By Alaskan Natives who reside in Alaska for subsistence, or
- (2) For purposes of creating and selling authentic native articles of handicraft and clothing, and
- (3) In each case, not accomplished in a wasteful manner.

(b) *Restrictions.* (1) No marine mammal taken for subsistence may be sold or otherwise transferred to any person other than an Alaskan Native or delivered, carried, transported, or shipped in interstate or foreign commerce, unless:

- (i) It is being sent by an Alaskan Native directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Alaskan Native; or
- (ii) It is sold or transferred to a registered agent in Alaska for resale or transfer to an Alaskan Native; or
- (iii) It is an edible portion and it is sold in an Alaskan Native village or town.

(2) No marine mammal taken for purposes of creating and selling authentic native articles of handicraft and clothing may be sold or otherwise transferred to any person other than an Indian, Aleut or Eskimo, or delivered, carried, transported or shipped in interstate or foreign commerce, unless:

- (i) It is being sent by an Indian, Aleut or Eskimo directly or through a registered agent to a tannery registered under paragraph (c) of this section for the purpose of processing, and will be returned directly or through a registered agent to the Indian, Aleut or Eskimo; or
- (ii) It is sold or transferred to a registered agent for resale or transfer to an Indian, Aleut, or Eskimo; or
- (iii) It has first been transformed into an authentic native article of handicraft or clothing; or
- (iv) It is an edible portion and sold (A) in an Alaskan Native village or town, or (B) to an Alaskan Native for his consumption.

(c) Any tannery, or person who wishes to act as an agent, within the jurisdiction of the United States may apply to the Director, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, for registration as a tannery or an agent which may possess and process marine mammal products for Indians, Aleuts, or Eskimos. The application shall include the following information:

- (i) The name and address of the applicant;
- (ii) A description of the applicant's procedures for receiving, storing, processing, and shipping materials;
- (iii) A proposal for a system of bookkeeping and/or inventory segregation by which the applicant could maintain accurate records of marine mammals received from Indians, Aleuts, or Eskimos pursuant to this section;
- (iv) Such other information as the Secretary may request;
- (v) A certification in the following language:

I hereby certify that the foregoing information is complete, true and correct to the best of my knowledge and belief. I understand that this information is submitted for the purpose of obtaining the benefit of an exception under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407) and regulations promulgated thereunder, and that any false statement may subject me to the criminal penalties of 18 U.S.C. 1001, or to penalties under the Marine Mammal Protection Act of 1972.

- (vi) The signature of the applicant.

The sufficiency of the application shall be determined by the Secretary, and in that connection, he may waive any requirement for information, or require any elaboration or further information deemed necessary. The registration of a tannery or other agent shall be subject to such conditions as the Secretary prescribes, which may include, but are not limited to, provisions regarding records, inventory segregation, reports, and inspection. The Secretary may charge a reasonable fee for processing such applications, including an appropriate apportionment of overhead and administrative expenses of the Department of Commerce.

(d) Notwithstanding the preceding provisions of this section, whenever, under the MMPA, the Secretary determines any species of stock of marine mammals to be depleted, he may prescribe regulations pursuant to section 103 of the MMPA upon the taking of such marine animals by any Indian, Aleut, or Eskimo and, after promulgation of such regulations, all takings of such marine mammals shall conform to such regulations.

(e) *Marking and reporting of Cook Inlet Beluga Whales* —(1) *Definitions.* In addition to definitions contained in the MMPA and the regulations in this part:

- (i) *Reporting* means the collection and delivery of biological data, harvest data, and other information regarding the effect of taking a beluga whale (*Delphinapterus leucas*) from Cook Inlet, as required by NMFS.
- (ii) *Whaling captain or vessel operator* means the individual who is identified by Alaskan Natives as the leader of each hunting team (usually the other crew on the boat) and who is the whaling captain; or the individual operating the boat at the time the whale is harvested or transported to the place of processing.
- (iii) *Cook Inlet* means all waters of Cook Inlet north of 59° North latitude, including, but not limited to, waters of Kachemak Bay, Kamishak Bay, Chinitna Bay, and Tuxedni Bay.

(2) *Marking.* Each whaling captain or vessel operator, upon killing and landing a beluga whale (*Delphinapterus leucas*) from Cook Inlet, Alaska, must remove the lower left jawbone, leaving the teeth intact and in place. When multiple whales are harvested during one hunting trip, the jawbones will be marked for identification in the field to ensure correct reporting of harvest information by placing a label marked with the date, time, and location of harvest within the container in which the jawbone is placed. The jawbone(s) must be retained by the whaling captain or vessel operator and delivered to NMFS at the Anchorage Field Office, 222 West 7th Avenue, Anchorage, Alaska 99513 within 72 hours of returning from the hunt.

(3) *Reporting.* Upon delivery to NMFS of a jawbone, the whaling captain or vessel operator must complete and mail a reporting form, available from NMFS, to the NMFS Anchorage Field Office within 30 days. A separate form is required for each whale harvested.

(i) To be complete, the form must contain the following information: the date and location of kill, the method of harvest, and the coloration of the whale. The respondent will also be invited to report on any other observations concerning the animal or circumstance of the harvest.

(ii) Data collected pursuant to paragraph (e) of this section will be reported on forms obtained from the Anchorage Field Office. These data will be maintained in the NMFS Alaska Regional Office in Juneau, Alaska, where such data will be available for public review.

(4) No person may falsify any information required to be set forth on the reporting form as required by paragraph (e) of this section.

(5) The Anchorage Field Office of NMFS is located in room 517 of the Federal Office Building, 222 West 7th Avenue; its mailing address is: NMFS, Box 43, Anchorage, AK. 99513.

(f) *Harvest management of Cook Inlet beluga whales*—(1) *Cooperative management of subsistence harvest.* Subject to the provisions of 16 U.S.C. 1371(b) and any further limitations set forth in §216.23, any taking of a Cook Inlet beluga whale by an Alaska Native must be authorized under an agreement for the co-management of subsistence uses (hereinafter in this paragraph “co-management agreement”) between the National Marine Fisheries Service and an Alaska Native organization(s).

(2) *Limitations.* (i) *Sale of Cook Inlet beluga whale parts and products.* Authentic Native articles of handicraft and clothing made from nonedible by-products of beluga whales taken in accordance with the provisions of this paragraph may be sold in interstate commerce. The sale of any other part or product, including food stuffs, from Cook Inlet beluga whales is prohibited, provided that nothing herein shall be interpreted to prohibit or restrict customary and traditional subsistence practices of barter and sharing of Cook Inlet beluga parts and products.

(ii) *Beluga whale calves or adults with calves.* The taking of a calf or an adult whale accompanied by a calf is prohibited.

(iii) *Season.* All takings of beluga whales authorized under §216.23(f) shall occur no earlier than July 1 of each year.

(iv) *Taking during 2001–2004.* The harvest of Cook Inlet beluga whales is restricted during the four-year period of 2001–2004 as follows:

(A) *Strike limitations.* Subject to the suspension provision of subparagraph (C), a total of six (6) strikes, which could result in up to six landings, are to be allocated through co-management agreement(s).

(B) *Strike allocations.* Four strikes, not to exceed one per year, are allocated to the Native Village of Tyonek. The remaining two strikes will be allocated over the 4–year period through co-management agreement with other Cook Inlet community hunters, with no more than one such strike being allocated during every other year.

(C) *Emergency provisions.* Takings of beluga whales authorized under §216.23 will be suspended whenever unusual mortalities exceed six (6) whales in any year. “Unusual mortalities” include all documented human-caused mortality (including illegal takings and net entanglements but excluding all legally harvested whales) and all documented mortality resulting from unknown or natural causes that occur above normal levels, considered for the purposes of this provision to be twelve beluga whales per year. The level of unusual mortalities shall be calculated by documenting mortality for the calendar year and subtracting twelve. The sum of this result and the carry over of unusual mortality from any previous year from which the population has not recovered is the level of unusual mortalities for the current year. If in any year the number of unusual mortalities exceeds six whales, no strikes will be allowed in that year or in subsequent years until the population has recovered from those mortalities through foregone future harvests and natural recruitment.

(v) *Taking during 2008 and subsequent years.* (A) Co-management agreements pursuant to paragraph (f)(1) of this section may be established for 5–year intervals beginning in 2008. Agreements must include specific provisions regarding the number and allocation of strikes, hunting practices to promote consistency with limitations in paragraph (f)(2)(ii) of this section, and to improve efficiency of the harvest, mitigating measures, and enforcement. Agreements may include provisions regarding the sex composition of the beluga harvest.

(B) Strike/harvest levels for each 5–year planning interval beginning in 2008 will be determined by the recovery of this stock as measured by the average abundance in the prior 5–year interval and the best estimate of the population growth rate using information obtained in the 10 years prior to each 5–year interval. Criteria for categorizing growth rates are presented below as an algorithm using the estimated abundance, the distribution statistics for growth rates, and the date. Harvest levels are subject to the Expected Mortality Limit. The established strike levels are presented in the Harvest Table and the following algorithm will be used to determine harvest levels for each 5–year period beginning in 2008.

(1) NMFS will calculate the average stock abundance over the previous 5–year period.

(2) NMFS will calculate a population growth rates from abundance estimates for the most recent 10–year period prior to the next 5–year period.

(3) Using the abundance and growth information obtained in accordance with paragraphs (f)(2)(v)(B)(1) and (f)(2)(v)(B)(2), NMFS will calculate the probabilities that the growth rate within the population would be less than 1 percent, less than 2 percent, or greater than 3 percent. NMFS will then use paragraphs (f)(2)(v)(B)(3)(i)) and (f)(2)(v)(B)(3)(vi)) of this section to select the proper cell from the Harvest Table to determine the harvest levels for the next 5–year interval.

(i) Is the average stock abundance over the previous 5–year period less than 350 beluga whales? If yes, the Harvest Table provides that the harvest is zero during the next 5–year period. If no, go to (f)(2)(v)(B)(3)(ii)) of this section.

(ii) Is the current year 2035 or later and is there more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is zero during the next 5–year period. If no, go to paragraph (f)(2)(v)(B)(3)(iii)) of this section.

(iii) Is the current year between 2020 and 2034 and there is more than a 20 percent probability the growth rate is less than 1 percent? If yes, the harvest is three whales during the next 5–year period. If no, go to paragraph (f)(2)(v)(B)(3)(iv)) of this section.

(iv) Is the current year 2015 or later and is there more than a 25 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the “Low” growth rate column. If no, go to paragraph (f)(2)(v)(B)(3)(vi)) of this section.

(v) Is the current year prior to 2015 and is there more than a 75 percent probability the growth rate is less than 2 percent? If yes, go to the harvest table using the “Low” growth rate column. If no, go to paragraph (f)(2)(v)(B)(3)(vi)) of this section.

(vi) Is there more than a 25–percent probability the growth rate is more than 3 percent? If yes, go to the harvest table using the “High” growth rate column. If no, go to the harvest table using the “Intermediate” growth rate column.

Harvest Table

5-year population averages	“High” growth rate	“Intermediate” growth rate	“Low” growth rate	Expected Mortality Limit
Less than 350	0	0	0	-
350–399	8 strikes in 5 years	5 strikes in 5 years	5 strikes in 5 years	21
400–449	9 strikes in 5 years	8 strikes in 5 years	5 strikes in 5 years	24
450–499	10 strikes in 5 years	8 strikes in 5 years	5 strikes in 5 years	27
500–524	14 strikes in 5 years	9 strikes in 5 years	5 strikes in 5 years	30
525–549	16 strikes in 5 years	10 strikes in 5 years	5 strikes in 5 years	32
550–574	20 strikes in 5 years	15 strikes in 5 years	5 strikes in 5 years	33
575–599	22 strikes in 5 years	16 strikes in 5 years	5 strikes in 5 years	35
600–624	24 strikes in 5 years	17 strikes in 5 years	6 strikes in 5 years	36
625–649	26 strikes in 5 years	18 strikes in 5 years	6 strikes in 5 years	38
650–699	28 strikes in 5 years	19 strikes in 5 years	7 strikes in 5 years	39
700–779	32 strikes in 5 years	20 strikes in 5 years	7 strikes in 5 years	42
780 +	Consult with co-managers to expand harvest levels while allowing for the population to grow			

(C) At the beginning of each 5-year period, an Expected Mortality Limit is determined from the Harvest Table using the 5-year average abundance. During the course of each calendar year, the number of beach casts carcasses and carcasses found floating either reported to NMFS or observed by NMFS personnel will be the number of mortalities for that year. If at the end of each calendar year this number exceeds the Expected Mortality Limit, then an unusual mortality event has occurred. The Estimated Excess Mortalities will be calculated as twice the number of reported dead whales above the Expected Mortality Limit. The harvest will then be adjusted as follows:

(1) The harvest level for the remaining years of the current 5-year period will be recalculated by reducing the 5-year average abundance from the previous 5-year period by the Estimated Excess Mortalities. The revised abundance estimate would then be used in the harvest table for the remaining years and the harvest adjusted accordingly.

(2) For the subsequent 5-year period, for the purpose of calculating the 5-year average, the Estimated Excess Mortalities would be subtracted from the abundance estimates of the year of the excess mortality event so that the average would reflect the loss to the population. This average would then be used in the table to set the harvest level.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 64 FR 27927, May 24, 1999; 69 FR 17980, Apr. 6, 2004; 73 FR 60985, Oct. 15, 2008]

Title 50: Wildlife and Fisheries
PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS
Subpart C—General Exceptions

§ 216.26 Collection of certain marine mammal parts without prior authorization.

Notwithstanding any other provision of this subpart:

(a) Any bones, teeth or ivory of any dead marine mammal may be collected from a beach or from land within 1/4 of a mile of the ocean. The term *ocean* includes bays and estuaries.

(b) Notwithstanding the provisions of subpart D, soft parts that are sloughed, excreted, or discharged naturally by a living marine mammal in the wild may be collected or imported for bona fide scientific research and enhancement, provided that collection does not involve the taking of a living marine mammal in the wild.

(c) Any marine mammal part collected under paragraph (a) of this section or any marine mammal part collected and imported under paragraph (b) of this section must be registered and identified, and may be transferred or otherwise possessed, in accordance with §216.22(c). In registering a marine mammal part collected or imported under paragraph (b) of this section, the person who collected or imported the part must also state the scientific research or enhancement purpose for which the part was collected or imported.

(d) No person may purchase, sell or trade for commercial purposes any marine mammal part collected or imported under this section.

(e) The export of parts collected without prior authorization under paragraph (b) of this section may occur if consistent with the provisions at §216.37(d) under subpart D.

[39 FR 1852, Jan. 15, 1974, as amended at 59 FR 50376, Oct. 3, 1994; 61 FR 21933, May 10, 1996]

DEPARTMENT OF COMMERCE**International Trade Administration**

A-570-878

Saccharin from the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 9, 2008.

FOR FURTHER INFORMATION CONTACT: Andrea Staebler Berton, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4037.

SUMMARY: On June 5, 2008, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on saccharin from the People's Republic of China ("PRC"). On the basis of a notice of intent to participate, and an adequate substantive response filed on behalf of domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the Final Results of Review section of this notice.

SUPPLEMENTARY INFORMATION:**Background**

On June 5, 2008, the Department published the notice of initiation of the sunset review of the antidumping duty order on saccharin from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-Year ("Sunset") Reviews*, 73 FR 31974 (June 5, 2008) ("Initiation Notice"). On June 20, 2008, the Department received a notice of intent to participate from a domestic interested party, PMC Specialties Group, Inc. ("PMCSG"), within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. PMCSG claimed interested party status under section 771(9)(C) of the Act as the sole domestic producer of saccharin in the United States and the petitioner in the original investigation. On July 7, 2008, the Department received a substantive response from PMCSG within the deadline specified in

section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

Scope of the Order

The product covered by this antidumping duty order is saccharin. Saccharin is defined as a non-nutritive sweetener used in beverages and foods, personal care products such as toothpaste, table top sweeteners, and animal feeds. It is also used in metalworking fluids. There are four primary chemical compositions of saccharin: (1) Sodium saccharin (American Chemical Society Chemical Abstract Service ("CAS") Registry 128-44-9); (2) calcium saccharin (CAS Registry 6485-34-3); (3) acid (or insoluble) saccharin (CAS Registry 81-07-2); and (4) research grade saccharin. Most of the U.S.-produced and imported grades of saccharin from the PRC are sodium and calcium saccharin, which are available in granular, powder, spray-dried powder, and liquid forms. The merchandise subject to this order is currently classifiable under subheading 2925.11.00 of the *Harmonized Tariff Schedule of the United States* ("HTSUS") and includes all types of saccharin imported under this HTSUS subheading, including research and specialized grades. Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated concurrently with this notice, and is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to section 752(c)(3) of the Act, we determine that revocation of the antidumping duty order on saccharin from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Manufacturers/Exporters/Producers	Weighted-Average Margin (percent)
Suzhou Fine Chemical Group Co., Ltd.	291.57
Shanghai Fortune Chemical Co., Ltd.	249.39
Kaifeng Xinhua Fine Chemical Factory	281.97
PRC-Wide	329.94

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or 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.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 2, 2008.

David M. Spooner,
Assistant Secretary for Import Administration.

[FR Doc. E8-24030 Filed 10-8-08; 8:45 am]

BILLING CODE 3510-DS-8

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****Proposed Information Collection; Comment Request; Applications and Reports for Registration as a Tanner or Agent**

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 8, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Les Cockreham, (907) 271-3021 or les.cockreham@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act exempts Alaskan natives from the prohibitions on taking, killing, or injuring marine mammals if the taking is done for subsistence or for creating and selling authentic native articles of handicraft or clothing. The natives need no permit, but non-natives who wish to act as a tanner or agent for such native products must register with NOAA and maintain and submit certain records. The information is necessary for law enforcement purposes.

II. Method of Collection

Paper documentation is submitted.

III. Data

OMB Number: 0648-0179.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 54.

Estimated Time Per Response: Applications and reports, 2 hours.

Estimated Total Annual Burden Hours: 108.

Estimated Total Annual Cost to Public: \$54.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 6, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8-23943 Filed 10-8-08; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Gear-Marking Requirement for Atlantic Large Whale Take Reduction Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before December 8, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Kristy Long, (301) 713-1401 or Kristy.Long@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of this proposed collection of information is to enable National Oceanic and Atmospheric Administration (NOAA) to reduce the

serious injury and mortality of large whales, especially right whales, due to incidental entanglement in United States (U.S.) commercial fishing gear. Any persons setting trap/pot or gillnet gear in some areas of the Atlantic Ocean would be required to paint or otherwise mark their gear with one or two color codes, designating the type of gear and area where the gear is set. The surface buoys of this gear would also need to be marked to identify the vessel or fishery. These marking requirements would apply in the various management areas under the Atlantic Large Whale Take Reduction Plan (ALWTRP). Additionally, fishermen in the Southeast U.S. Restricted Area South would need to call-in before departing on a fishing trip to arrange for an observer.

The goals of this collection of information are to obtain more information on where large whales are being entangled and on what type gear responsible for the entanglement. This information will allow NMFS to focus further risk reduction measures in certain areas or fisheries, where needed, to meet the goals of the ALWTRP. Also, fisheries observers can provide information to managers on whether regulations need to be modified to address compliance or safety issues.

II. Method of Collection

Information collected is in the form of gear marking and telephone calls.

III. Data

OMB Number: 0648-0364.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations and individuals or households.

Estimated Number of Respondents: 4,270.

Estimated Time Per Response: Gear marking per vessel, 5 minutes * 50 marks = 4 hours and 10 minutes; trip notification to observers, 2 minutes.

Estimated Total Annual Burden Hours: 18,399.

Estimated Total Annual Cost to Public: \$11,203.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be