

**Countervailing Duty Proceeding**

None.

**Suspension Agreements**

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30

<sup>4</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Activated Carbon from the People's Republic of China ("PRC") who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>5</sup> Petitioners, Calgon Carbon Corporation and Norit Americans Inc., also requested a review of fifteen additional companies, but were unable to provide addresses for these companies. We are still considering the appropriateness of initiating a review on these fifteen companies. Therefore, at this time, we are not initiating a review with respect to the following companies: Actview Carbon Technology Co., Ltd.; Alashan Yongtai Activated Carbon Co., Ltd.; Beijing Huapeng Environment Protection Materials; Datong Kangda Activated Carbon Factory; Datong Runmei Activated Carbon Factory; Fangyuan Carbonization Co., Ltd.; Huaxin Active Carbon Plant; Jilin Goodwill Activated Carbon Plant; Kaihua Xinghua Chemical Plant; Xingtai Coal Chemical Co., Ltd.; Xinyuan Carbon; Yinyuan Carbon; Yuanguang Activated Carbon Co., Ltd.; YunGuan Chemical Factory; and, Yuyang Activated Carbon Co., Ltd.

<sup>6</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of Certain Steel Threaded Rod from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>7</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of Fronseating Service Valves from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>8</sup> If one of the above named companies does not qualify for a separate rate, all other exporters of 1-Hydroxyethylidene-1, 1-Diphosphonic Acid (HEDP) from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>9</sup> If the above named company does not qualify for a separate rate, all other exporters of Magnesium Metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>10</sup> If the above named company does not qualify for a separate rate, all other exporters of non-malleable cast iron pipe fittings from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

<sup>11</sup> In the initiation notice that published on March 30, 2010 (75 FR 15679), the review period for the above referenced case was incorrect. The period listed above is the correct period of review for this case.

days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia v. United States*, 291 F.3d 806 (Fed. Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures "gap" period, of the order, if such a gap period is applicable to the POR.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures* (73 FR 3634). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (e.g., the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: May 25, 2010.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

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**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

**RIN 0648-XU10**

**Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), NMFS hereby issues a permit for a period of three years to authorize the incidental, but not intentional, taking of individuals of the Central North Pacific (CNP) stock of endangered humpback whales by the Hawaii-based longline fisheries (deep-set and shallow-set). This authorization is based on determinations that mortality and serious injury of humpback whales incidental to commercial fishing will have a negligible impact on the CNP stock of humpback whales, that a recovery plan has been developed, that a monitoring program is established, that vessels in the fisheries are registered, and that the MMPA does not require a take reduction plan (TRP) at this time.

**DATES:** This permit is effective for a 3-year period beginning May 28, 2010.

**ADDRESSES:** Reference material for this permit is available on the Internet at the following address: <http://www.fpir.noaa.gov>.

Copies of the reference materials may also be obtained from the Protected Resources Division, NMFS, Pacific Islands Region, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI, 96814 Attention - Lisa Van Atta, Assistant Regional Administrator.

**FOR FURTHER INFORMATION CONTACT:** Lisa Van Atta, Pacific Islands Region (808) 944-2257 or Tom Eagle, Office of Protected Resources, (301) 713-2322, ext. 105.

**SUPPLEMENTARY INFORMATION:****Background**

MMPA section 101(a)(5)(E) requires NMFS to allow the taking of marine mammals from species or stocks listed as threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*) incidental to commercial fishing operations if NMFS determines that: (1) incidental mortality and serious injury will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

On February 24, 2010 (75 FR 8305), NMFS proposed to issue a permit under

MMPA section 101(a)(5)(E) to vessels registered in the Hawaii-based longline fisheries (deep-set and shallow-set) to incidentally take individuals from the CNP stock of humpback whales, which are listed as endangered under the Endangered Species Act (ESA). The Hawaii-based longline fisheries do not take other species or stocks of threatened or endangered marine mammals; therefore, no other species or stocks were considered for this permit. There has been one serious injury (in 2006) of a CNP humpback whale in the Hawaii-based shallow-set longline fishery.

No other mortality or serious injury of humpback whales has been recorded incidental to the longline fishery (a single fishery under MMPA section 118 from 1994 until 2004, and separated into shallow-set and deep-set fisheries since 2004) since 1994. Consequently, authorization only for harassment and non-lethal injury of humpback whales is necessary incidental to the deep-set longline fishery. The proposed permitted lethal (serious injury or mortality) taking of CNP humpback whales incidental to the Hawaii-based longline fisheries was limited to the shallow-set fishery. Although humpback whales are taken incidental to fisheries in Alaskan, as well as Hawaiian, waters the proposed permit was limited to the Hawaii-based longline fisheries. Alaska-based fisheries will be addressed in a future permitting procedure.

#### Determinations for the Permit

The following determinations and supporting information were included in notice of the proposed permit (75 FR 8305, February 24, 2010). As described in detail in the documentation for the negligible impact determination (see **ADDRESSES**), NMFS estimated that mortality and serious injury of CNP humpback whales incidental to commercial fishing operations in HI and AK totaled 5.4 whales per year, which is 26.5 percent of the stock's Potential Biological Removal (PBR) level. NMFS concluded that incidental mortality and serious injury at this total rate will have a negligible impact on CNP humpback whales.

A recovery plan for humpback whales has been in place since November 1991. Accordingly, a recovery plan for humpback whales, including the CNP stock, has been developed.

An observer program is in place for the Hawaii-based longline fisheries. The shallow-set fishery has 100 percent observer coverage. The deep-set fishery has at least 20 percent observer coverage. These observer levels are required under the ESA to protect

threatened or endangered sea turtles taken incidental to longline fishing operations for Pacific pelagic species of fish. Furthermore, participants in the fishery are required to hold a Federal permit for fishing, and registration under MMPA section 118(c) has been integrated into the fishery permitting process. Accordingly, NMFS determines that, as required by MMPA section 118, a monitoring program is established for these fisheries and that vessels engaged in such fisheries are registered in accordance with such section.

The purpose of a TRP is to reduce mortality and serious injury incidental to commercial fisheries, and only Category I or II fisheries are subject to take reduction requirements. Observer reports since 1994 confirm that there have been no serious injuries or mortalities of a CNP humpback whale in the Hawaii-based deep-set longline fishery. Recent levels of mortality in the shallow-set fishery (0.2 whales per year) are insignificant and average less than 1 percent of the PBR of the CNP humpback whale stock. As a result of the current data, both the deep-set and shallow-set fisheries would be listed in the List of Fisheries as Category III fisheries, but for the higher level of taking of other marine mammals, not listed under the ESA. Finally, MMPA section 118(f) provides that if there is insufficient funding available to develop and implement a take reduction plan for stocks that interact with commercial Category I and II fisheries, the Secretary shall give highest priority to the development of TRP's for species or stocks whose level of incidental mortality and serious injury exceeds PBR, those that have small population size, and those that are declining most rapidly. NMFS has evaluated availability of TRT funding for the humpback whale under the statutory criteria and determined that there is insufficient funding available for a TRT. Accordingly, NMFS determines that a TRP is not required by MMPA section 118 at this time. (See response to Comment 9.)

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. NMFS and the Western Pacific Fishery Management Council (Council) have analyzed the impacts of fishing operations, including the deep-set and shallow-set longline fisheries on the human environment. The current permit does not modify fishing operations; therefore, the analyses included in two recent Environmental Impact Statements (EIS) issued by NOAA evaluate the impacts of issuing

the current permit. The Council and NMFS completed the Final Supplemental EIS for Amendment 18 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region in March 2009, and the Assistant Administrator for Fisheries (AA) signed the Record of Decision for this action on June 17, 2009. The Council and NMFS also completed a Final Programmatic EIS toward an Ecosystem Approach for the Western Pacific Region: From Species-Based Fishery Management Plans to Place-Based Fishery Ecosystem Plans in September 2009, and the AA signed the Record of Decision for this action on December 11, 2009. Because this permit does not modify any fishery operation and the effects of the fishery operations have been evaluated fully in accordance with NEPA, no additional NEPA analysis is required for this permit.

Section 7 of the ESA requires NMFS to consult with itself when agency actions may affect threatened or endangered marine species, including marine mammals. NMFS has evaluated numerous actions related to implementation of fishery management plans for pelagic species by Hawaii-based fisheries, including the deep-set and shallow-set longline fisheries. The two most recent biological opinions (BiOp) related to deep-set and shallow-set longline fisheries are (1) BiOp and Incidental Take Statement on the Continued Authorization of the Hawaii-based Pelagic, Deep-set, Tuna Longline Fishery Based on the Fishery Management Plan for Pelagic Fishing of the Western Pacific Region, October 4, 2005; and (2) BiOp on Management Modifications for the Hawaii-based Shallow-set Longline Swordfish Fishery Implementation of Amendment 18 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, October 15, 2008. NMFS reviewed these BiOps and information related to issuing the permit and have concluded that issuing the permit would not modify the activities of the fishery nor the effects of these fishing activities on ESA-listed species, including humpback whales, in a manner that would cause adverse effects not previously evaluated and that there has been no new listing of species or designation of critical habitat that could be affected by the action. Accordingly, no additional analyses under the ESA are required at this time.

#### Current Permit

NMFS has made determinations under MMPA section 101(a)(5)(E) that (1) mortality and serious injury of CNP humpback whales incidental to

commercial fishing will have a negligible impact on the stock, (2) a recovery plan for humpback whales has been developed, (3) as required by MMPA section 118, a monitoring program has been established in the Hawaii-based longline fisheries, and vessels in the fishery are registered, and (4) no TRP is required by MMPA section 118 to reduce mortality and serious injury of CNP humpback whales incidental to Hawaii-based longline fisheries. As required by MMPA section 101(a)(5)(E), NMFS hereby issues a permit to vessels in the Hawaii-based longline fisheries (deep-set and shallow-set) authorizing the taking of CNP

humpback whales incidental to fishing operations. Taking of humpback whales incidental to the deep-set fishery is limited to non-lethal taking (harassment and injury). Taking of these whales incidental to the shallow-set fishery includes harassment and non-serious injury, as well as serious injury and mortality. If NMFS determines at a later date that incidental mortality and serious injury from commercial fishing is having more than a negligible impact on the CNP stock of humpback whales, NMFS may use its emergency authority under MMPA section 118 to protect the stock and may modify the permit issued herein.

MMPA section 101(a)(5)(E) requires NMFS to publish in the **Federal Register** a list of fisheries that have been authorized to take threatened or endangered marine mammals. A list of such fisheries was published, as required, on October 26, 2007 (72 FR 60814), which authorized the taking of threatened or endangered marine mammals to one Category I and two Category III fisheries along the west coast of the U.S. With issuance of the current permit, NMFS adds the Hawaii-based deep-set and shallow-set longline fisheries to this list (Table 1).

TABLE 1. LIST OF FISHERIES AUTHORIZED TO TAKE THREATENED AND ENDANGERED MARINE MAMMALS INCIDENTAL TO FISHING OPERATIONS.

Fishery	Category	Marine Mammal Stock
CA/OR Drift Gillnet Fishery	I	Fin whale, CA/OR/WA stock Humpback whale, ENP stock Sperm whale, CA/OR/WA stock
CA lobster, prawn, shrimp, rock crab, fish pot	III	Fin whale, CA/OR/WA stock Humpback whale, ENP stock Sperm whale, CA/OR/WA stock
WA/OR/CA crab pot	III	Fin whale, CA/OR/WA stock Humpback whale, ENP stock Sperm whale, CA/OR/WA stock
HI deep-set (tuna target) longline/set line	I	Humpback whale, CNP stock
HI shallow-set (swordfish target) longline/set line	II	Humpback whale, CNP stock

**Comments and Responses**

NMFS received letters containing comments from four organizations, the Marine Mammal Commission (Commission), the Hawaii Longline Association (HLA), the Council, and the Human Society of the United States (HSUS). Each letter contained multiple comments.

*Comment 1:* The Commission briefly summarized NMFS' findings for the proposed permit and recommended that NMFS comply with MMPA section 101(a)(5)(E) by issuing the permit to the Hawaii-based deep-set and shallow-set longline fisheries to authorize the taking of CNP humpback whales incidental to their fishing operations.

*Response:* NMFS agrees and is issuing the permit as required by the MMPA.

*Comment 2:* The Commission noted that NMFS is currently conducting a status review of humpback whales under the ESA and recommended that NMFS reexamine the findings related to this permit if the status review indicates a new stock structure and factors that may compromise the conservation of those stocks.

*Response:* NMFS agrees to re-evaluate these findings if the status review indicated a new stock structure modifying the current CNP humpback whale stock.

*Comment 3:* HLA supported issuance of the proposed permit and supporting documentation. HLA's rationale for its support included the following:

(1) Abundance of the CNP stock has substantially recovered from depressed levels resulting from commercial whaling, noting that the estimated annual rate of increase is 7 percent;

(2) Mortality and serious injury of the stock is less than the stock's PBR, and there has been no detectable adverse impact on the growth and recovery of the stock;

(3) Interactions between the Hawaii-based longline fisheries and the CNP stock are "extremely rare events";

(4) There has been no observed mortality or serious injury of humpback whales incidental to the deep-set fishery and only a single observed interaction of a humpback whale with this fishery since 2004 with observer coverage of 20 percent; and

(5) There has been only one observed serious injury of a humpback whale in the shallow-set fishery only one interaction of any kind observed in this fishery with 100 percent observer coverage since 2004.

*Response:* NMFS agrees that the available information supports the finding of negligible impact required by MMPA section 101(a)(5)(E).

*Comment 4:* HLA stated that NMFS used a worst case analysis for the negligible impact analysis and cited a decision by the Supreme Court (Bennett v. Spear, 520 U.S. 154, 176-77 (1997)) related to the ESA. HLA also asserted that NMFS' analysis implementing MMPA section 101(a)(5)(E) reflects exactly the kind of zealous, but misguided, conservation bias that the definition of "negligible impact" and the "best science" requirements proscribe.

*Response:* NMFS disagrees that the negligible impact analysis is a worst case analysis and that the analysis is inconsistent with the MMPA. NMFS maintains that the finding was based upon appropriate levels of precaution. Although NMFS used a "worst case"

estimate of abundance to calculate PBR for this stock (see Allen and Angliss, 2010 Alaska Marine Mammal Stock Assessment Reports (SAR), 2009, NOAA Tech. Mem. NMFS-AFSC-206.), NMFS also acknowledged in the SAR and in the negligible impact determination for this permit that mortality may have been underestimated (minimum estimate). Estimates of mortality and serious injury were based upon strandings and observations of entangled or injured free-swimming humpback whales, and such data sources may be underestimates because not all entangled or injured whales are observed, identified to source, and recorded.

HLA incorrectly applies court rulings under the ESA to agency findings under the MMPA. In the original passage of the MMPA, the associated House of Representatives Report stated the burden for permits as follows: "Before any marine mammal may be taken, the appropriate Secretary must first establish general limitations on the taking, and must issue a permit which would allow that taking. In every case, the burden is placed upon those seeking permits to show that the taking should be allowed and will not work to the disadvantage of the species or stock of animals involved. If that burden is not carried and it is by no means a light burden the permit may not be issued. The effect of this set of requirements is to insist that the management of the animal populations be carried out with the interests of the animals as the prime consideration." (House of Representatives Report No. 92-707, December 4, 1971)

For the provisions of MMPA section 101(a)(5)(E), the associated House of Representatives Report stated that "These permits may extend for a maximum of three years and may be issued only if the Secretary determines that the total of such [incidental to commercial fishing] taking will have a negligible impact on the species or stock. The Committee notes that the "negligible impact" standard in the MMPA is more stringent than the "no jeopardy" standard in the ESA, and consequently provides more protection for endangered or threatened marine mammals under the MMPA than under the ESA." (House of Representatives Report No. 103-439, March 21, 1994). Thus, a precautionary evaluation under the MMPA is appropriate.

In this determination, NMFS evaluated uncertainties in abundance and in mortality and serious injury, considered the increase in population size in using Criterion 3 (PBR rather than 10 percent of the stock's PBR)

rather than the more stringent Criterion 1 (10 percent of PBR), in concluding that mortality and serious injury of CNP humpback whales incidental to commercial fishing was having a negligible impact on the population (see History of Applying Negligible Impact in Fisheries above). Accordingly, NMFS maintains that the negligible impact determination contains an appropriate level of precaution as required by the MMPA. (Also, see Comment 8 and associated response.)

*Comment 5:* The Council supported issuance of the proposed permit, noted that the Hawaii-based deep-set longline fishery had only 1 to 2 non-fatal interactions with humpback whales, noted that only one humpback whale had been observed seriously injured in the shallow-set longline fishery, and expressed that it was perplexed why NMFS waited so long to make a determination and issue a permit for taking CNP humpback whales incidental to HI-based longline fishing.

*Response:* NMFS acknowledges the Council's support for this permit. The delay in issuing this permit was related to several factors. First, a basin-wide abundance estimate was in progress as part of a large international study of humpback whales, and this basin-wide estimate had to be partitioned by stocks recognized under the MMPA. Second, as noted in the response to Comment 4, the requisite negligible impact determination must include the effect of the total mortality and serious injury of CNP humpback whales incidental to commercial fishing rather than incidental to the Hawaii-based fisheries only. Most mortality and serious injury has been documented in Alaska rather than Hawaii, this mortality had to be evaluated and reconciled among several documents, and fishery-caused mortality and serious injury had to be evaluated in the context of other human-related sources of mortality and serious injury (due to the comparison to PBR, which includes consideration of all removals other than natural mortalities). Third, staffing limitations required conservation activities with the Pacific Islands Region to be address in priority order, with activities directed toward species or stocks most at risk receiving highest priority.

*Comment 6:* The Council also noted that the CNP humpback population is increasing, which could result in more interactions with the HI longline fleet. For this reason, NMFS must now consider providing the HI-based deep-set fishery a permit including lethal as well as non-lethal taking.

*Response:* NMFS disagrees that permitting lethal takes incidental to the

deep-set longline fishery is appropriate at this time. Despite continued population growth in the CNP stock of humpback whales, the long history of no documented lethal taking and of very few takings of any kind suggests the potential for increased mortality and serious injury incidental to the deep-set fishery, despite population growth over the 3-year duration of the MMPA permit, is minimal.

*Comment 7:* HSUS noted that NMFS included an incorrect Internet address for the supporting negligible impact determination in the notice of the proposed permit and located a draft negligible impact determination dated February 2010. HSUS noted the determination should be final before issuing a permit to a fishery.

*Response:* NMFS acknowledges that the Internet address in the notice of the proposed permit was incorrect and that HSUS and three other organizations were able to locate the draft negligible impact determination. The negligible impact determination was available in draft form because the MMPA requires that such a determination be completed after public review and comment. Accordingly, NMFS made the draft available so that the public had the opportunity to provide additional information or insights before making a final determination. The final negligible impact determination will be released concurrent with issuance of the permit.

*Comment 8:* NMFS used a minimum estimate of mortality and serious injury in its finding that mortality and serious injury of CNP humpbacks incidental to commercial fishing is having a negligible impact on the stock. HSUS noted that the take of large endangered whales in most fisheries is generally under-represented by fisher self-reports or limited observer coverage; that NMFS did not include entanglements observed in Hawaii in the 2009 SAR for the CNP stock of humpback whales, upon which the negligible impact determination was based. Furthermore, large whales may become entangled in gear and break free with gear attached; however, NMFS did not include information on the percentage of trips where there are reports of lost gear.

*Response:* NMFS acknowledged (in the negligible impact determination and within the SAR) that the estimate of mortality and serious injury is considered a minimum estimate. The extent of lost fishing gear was not reported because it is not available for most fisheries; furthermore, gear may be lost due to many factors other than large whale entanglements.

For several reasons, the finding of negligible impact is reasonable in spite

of the potential for underestimating mortality and serious injury. First, PBR is based upon conservative estimates of abundance and  $R_{max}$  and has a recovery factor of 0.1. Second, the PBR approach was thoroughly tested in simulation trials and found to be robust to over-estimates of  $R_{max}$ , underestimates of mortality, and low precision of abundance and mortality estimates. Finally, the annual rate of increase of the stock observed in Hawaii is reported in the SAR to be 7 percent. Accordingly, in spite of all factors, human-caused (including commercial fisheries) and natural, that may be affecting humpback whales in the North Pacific Ocean, this stock is increasing rapidly. For these reasons, NMFS maintains that the negligible impact determination is based upon reasonable precaution. (Also, see Comment 4 and the associated response.)

*Comment 9:* HSUS stated that NMFS wrongly claims that the obligations to develop and implement a TRP are subject to the availability of funding. Rather, the MMPA requires NMFS to develop and implement a TRP for each strategic stock of marine mammals that interacts with fisheries that have frequent (Category I) or occasional (Category II) incidental mortality and serious injury of marine mammals. Further, MMPA section 101(a)(5)(E) clearly requires that a TRP regardless of what priority NMFS assigns its development must be in existence before incidental take may be authorized. If NMFS cannot develop or, at least initiate development of, a TRP because it lacks funding, it cannot authorize incidental take. It would be a simple matter for NMFS to convene a working group of the existing Take Reduction Team (TRT) for false killer whales, which includes the Hawaii-based longline fisheries, to recommend measures to reduce likelihood of interactions with humpbacks.

*Response:* The CNP stock of humpback whales is strategic. The Hawaii-based longline fisheries are Category I (deep-set fishery) and Category II (shallow-set fishery). Moreover, the List of Fisheries for 2009 and 2010 noted that CNP stock of humpback whales was the marine mammal species or stock for which the shallow-set fishery had occasional mortality and serious injury.

However, NMFS' analysis of the MMPA requirements and the available information does not support developing a TRP for humpback whales. The CNP stock of humpback whales is strategic because humpback whales were listed as an endangered species under the ESA due to the effects of

commercial whaling that ceased before the MMPA was passed. Current human-caused mortality of CNP humpback whales is negligible, particularly mortality and serious injury resulting from longline fishing.

MMPA 118(f)(2) provides that the goal of a TRP for a strategic stock is reduce within 6 months of implementation the serious injury and mortality in the course of commercial fishing operations to levels less than PBR. The long-term goal of the plan is to reduce, within 5 years of its implementation, the incidental mortality and serious injury in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate. Not only does the best available information indicate that neither the deep-set nor shallow-set longline fishery incidentally kills or seriously injures humpback whales at levels that would require a TRP to be developed and implemented. The 2009 SAR for the CNP stock of humpback whales, which became available after the 2010 LOF was prepared, shows that there is no mortality and serious injury of humpback whales incidental to the deep-set longline fishery, and the PBR for the stock is 20.4. Information discussed in the notice of the proposed permit and negligible impact determination shows that mortality and serious injury of CNP humpback whales incidental to the shallow-set longline fishery (0.2 whales per year) is less than 1 percent of the PBR of the stock.

Also, MMPA section 118(f) provides that if there is insufficient funding available to develop and implement a take reduction plan for stocks that interact with commercial Category I and II fisheries, the Secretary shall give highest priority to the development of TRP's for species or stocks whose level of incidental mortality and serious injury exceeds PBR, those that have small population size, and those that are declining most rapidly. NMFS has evaluated availability of TRT funding for the humpback whale under the statutory criteria and determined that there is insufficient funding available for a TRT. Accordingly NMFS concludes that MMPA section 118 does not require a TRP to address mortality and serious injury of CNP humpback whales incidental to either the deep-set or shallow-set longline fishery at this time.

A TRP for CNP humpback whales is a low priority, and MMPA section 118 does not require a TRP in this case. However, NMFS considered, as HSUS suggested, including humpback whales within the scope of the TRP being developed for false killer whales. NMFS

is aware that interactions between odontocetes, including false killer whales, and these Hawaii-based longline fisheries appear related to depredation of bait or catch in the fisheries. Humpback whale entanglement is more likely due to accidental encounters with fishing gear than depredation. Accordingly, NMFS concluded that including humpback whales within the scope of the TRP would likely detract from the focus of the TRP, which is to reduce mortality and serious injury of false killer whales incidental to the deep-set longline fishery.

Dated: May 24, 2010.

**James H. Lecky,**

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

[FR Doc. 2010-12916 Filed 5-27-10; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Civil Nuclear Trade Advisory Committee Public Meeting

**AGENCY:** International Trade Administration, DOC.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of the next meeting of the Civil Nuclear Trade Advisory Committee (CINTAC). The members will discuss issues outlined in the following agenda.

**DATES:** The meeting is scheduled for: Tuesday, June 15, 2010, from 1 p.m. to 4 p.m. Eastern Daylight Time (EDT).

**ADDRESSES:** The meeting will be held at the U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave, NW., Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sarah Lopp, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave, NW., Washington, DC 20230. (Phone: 202-482-3851; Fax: 202-482-5665; e-mail: [Sarah.Lopp@trade.gov](mailto:Sarah.Lopp@trade.gov)).

#### **SUPPLEMENTARY INFORMATION:**

*Background:* The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of