



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XC645

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; request for comments.

SUMMARY: NMFS plans to issue a permit for a period of three years to authorize the incidental, but not intentional, taking of three stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA) by the California (CA) thresher shark/swordfish drift gillnet (DGN) fishery (≥ 14 inch mesh) and the Washington/Oregon/California (WA/OR/CA) sablefish pot fishery. In accordance with the Marine Mammal Protection Act (MMPA), NMFS has made a preliminary determination that incidental taking from commercial fishing will have a negligible impact on the endangered fin whale, CA/OR/WA stock; humpback whale, CA/OR/WA stock; and sperm whale, CA/OR/WA stock. Recovery plans have been completed for these endangered species. This authorization is based on a determination that this incidental take will have a negligible impact on the affected marine mammal stocks. NMFS must issue this permit provided that we can make the determinations that: the incidental take will have a negligible impact on the affected marine mammal stocks; a recovery plan for all affected stocks of threatened or endangered marine mammals has been developed or is being developed; and as required by the MMPA, a take

reduction plan and monitoring program have been implemented and vessels in the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) and WA/OR/CA sablefish pot fishery are registered. NMFS solicits public comments on the draft negligible impact determination and on the proposal to issue a permit to these fisheries for the taking of affected threatened or endangered stocks of marine mammals.

DATES: Comments must be received by [Insert date 30 days from date of publication in the Federal Register].

ADDRESSES: A draft of the negligible impact determination is available on the Internet at the following addresses: <http://swr.nmfs.noaa.gov/>. Recovery plans for these species are available on the Internet at the following address: <http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals>.

You may submit comments, identified by NOAA-NMFS-2013-0073, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0073, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.

Mail: Send comments or requests for copies of reports to: Chris Yates, Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 W Ocean Blvd, Suite 4200, Long Beach, CA 90802 Comments may also be faxed to (562) 980–4027.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on

www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Monica DeAngelis, NMFS Southwest Region, (562) 980–3232, or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427–8402.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(E) of the Marine Mammal Protection Act (MMPA), 16 U.S.C. 1361 et seq., states that NOAA’s National Marine Fisheries Service (NMFS), as delegated by the Secretary of Commerce, shall for a period of up to three years allow the incidental taking of marine mammal species listed under the Endangered Species Act (ESA), 16 U.S.C. 1531 et seq., by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must first determine, after notice and opportunity for public comment, 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.

NMFS is considering the issuance of a permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) and the WA/OR/CA sablefish pot fishery (both Federal Category II fisheries) to incidentally take three stocks of threatened or endangered marine mammals: the CA/OR/WA stock of fin whales (*Balaenoptera physalus*), the CA/OR/WA stock of humpback whales (*Megaptera novaeangliae*), and the CA/OR/WA stock of sperm whales (*Physeter macrocephalus*). A history of MMPA section 101(a)(5)(E) permits related to these stocks was included in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (e.g. 72 FR 60814; October 26, 2007). The data for considering these authorizations were reviewed coincident with the preparation of the 2012 MMPA List of Fisheries (LOF or List) (76 FR 73912; November 29, 2011), the 2011 marine mammal stock assessment reports (SARs) (Carretta et al. 2012; Allen and Angliss 2011), the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS), recovery plans for these species (available on the Internet at the following address: [http:// www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals](http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals)), and other relevant sources.

Based on observer data and marine mammal reporting forms, the California thresher shark/swordfish drift gillnet fishery (≥ 14 in mesh) and the Washington/Oregon/California sablefish pot fishery are the Category II fisheries that operate in the ranges of affected stocks, namely the CA/OR/WA stocks of fin, sperm whales, and humpback whales, and are currently considered for authorization. A detailed description of these fisheries can be found below. All other Category II fisheries that interact with the marine mammal stocks observed off the coasts of Washington, Oregon, and California are State-managed and are not considered for authorization under this permit. NMFS calculated the total human-related serious injury and

mortality to make a negligible impact determination for this proposed authorization and included all human sources, such as commercial fisheries and ship strikes. There are no fisheries classified as Category I fisheries that interact with the marine mammal stocks observed off the coasts of Washington, Oregon, or California. Participants in Category III fisheries are not required to obtain incidental take permits under MMPA section 101(a)(5)(E), but are required to report injuries or mortality of marine mammals incidental to their operations.

Basis for Determining Negligible Impact

Prior to issuing a permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if mortality and serious injury incidental to commercial fisheries will have a negligible impact on the affected species or stocks of marine mammals. NMFS satisfied this requirement through completion of a draft negligible impact determination (NID). NMFS clarifies that incidental mortality and serious injury include only direct mortality and serious injury, such as from entanglement or hooking in fishing gear. Indirect effects, such as the effects of removing prey from habitat, are not included in this analysis. A biological opinion prepared under ESA section 7 considers direct and indirect effects of Federal actions and, thus, contains a broader scope of analysis than is required by MMPA section 101(a)(5)(E).

Section 101(a)(5)(E) of the MMPA requires the authorization of the incidental taking of individuals from marine mammal stocks listed as threatened or endangered under the ESA in the course of commercial fishing operations if NMFS determines, among other things, that incidental mortality and serious injury will have a negligible impact on the affected species or stock. Although the MMPA does not define “negligible impact,” NMFS has issued regulations providing a qualitative definition of “negligible impact,” as defined in 50 CFR 216.103 and, through scientific analysis, peer review, and public notice, developed a quantitative approach and

as it applies here is, “an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.” The development of the approach and process was outlined in detail in the current draft NID made available through this notice and was included in previous notices for other permits to take threatened or endangered marine mammals incidental to commercial fishing (e.g. 72 FR 60814; October 26, 2007; for the CA/OR/WA stock of fin, humpback, and sperm whales).

Criteria for Determining Negligible Impact

In 1999 NMFS adopted criteria for making negligible impact determinations for MMPA 101(a)(5)(E) permits (64 FR 28800; May 27, 1999). In applying the 1999 criteria to determine whether mortality and serious injury incidental to commercial fisheries will have a negligible impact on a listed marine mammal stock, Criterion 1 (total human-related serious injury and mortality are less than 0.1 potential biological removal level (PBR)) is the starting point for analysis. If this criterion is satisfied (i.e., total human-related serious injuries and mortality are less than 0.1 PBR), the analysis would be concluded, and the impact would be determined to be negligible. The remaining criteria describe alternatives under certain conditions, such as fishery mortality below the negligible threshold but other human-caused mortality above the threshold or fishery and other human-caused mortality between the negligible threshold and PBR for a stock that is increasing or stable. If Criterion 1 is not satisfied, NMFS may use one of the other criteria as appropriate. Criterion 2 is satisfied if the total human-related serious injury and mortality are greater than PBR, and fisheries-related mortality is less than 0.1 PBR. If Criterion 2 is satisfied, individual fisheries may be permitted if management measures are being taken to address non-fisheries-related serious injuries and mortality. Criterion 3 is satisfied if total fisheries-related

serious injury and mortality are greater than 0.1 PBR and less than PBR and the population is stable or increasing, fisheries may be permitted subject to individual review and certainty of data. Criterion 4 stipulates that if the population abundance of a stock is declining, the threshold level of 0.1 PBR will continue to be used. Criterion 5 states that if total fisheries-related serious injuries and mortalities are greater than PBR, permits may not be issued.

We used two time frames for this analysis. The first time frame for the data used in this analysis is from 1998 (the first full year post-Take Reduction Plan implementation (October 30, 1997)), through December 31, 2011. This 14-year time frame was chosen initially because after the Pacific Offshore Cetacean Take Reduction Plan (POCTRP) was implemented, regulations required skippers to use at least 36' extenders and pingers in the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh), which is considered to have reduced the incidental take of many marine mammal species, particularly cetaceans (Carretta and Barlow 2011). This time frame also provided a comprehensive look at all of the fisheries, including the WA/OR/CA sablefish pot fishery, given changes in oceanographic conditions, fishing practices, and reporting and stranding records. The 2001 time/area closure of the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) off central and northern California/southern Oregon is also encompassed in this time frame. The second time frame for the data used in this analysis includes the most recent five-year period (January 1, 2007 through December 31, 2011). A five-year time frame provides enough data to adequately capture year-to-year variations in take levels, while reflecting current environmental and fishing conditions as they may change over time. Additionally, because the permit issued under MMPA section 101(a)(5)(E) is for a three-year period, the most up-to-date data available for complete years is used (i.e., 2007-2011).

A conservative, or precautionary, approach is taken in these analyses for evaluating the negligible impact of fisheries and other sources of injury or mortality, such as ship strikes, on these stocks, so in certain cases, the maximum number was used for the calculations. For example, if a ship strike occurred, but serious injury or mortality was not observed on scene or confirmed by necropsy of the stranded animal, and if further review of reports and other sources then confirmed serious injury/mortality, it was assumed for purposes of this analysis, that serious injury/mortality occurred, and was included in the total number used in the calculation. Furthermore, in using two time frames for the negligible impact analyses (1998-2011 and 2007-2011), we took a precautionary approach by ensuring that a negligible impact determination could be made for both time frames considered.

Negligible Impact Determinations

In considering the appropriate criteria for determining whether commercial fisheries off the U.S. west coast are having a negligible impact on the CA/OR/WA stocks of fin whales, humpback whales, and sperm whales, a summary of the negligible impact determinations follows.

Criterion 1 Analysis

Criterion 1 would be satisfied if the total human-related serious injury and mortality are less than PBR.

- The 14-year (1998-2011) annual average serious injury and mortality to the CA/OR/WA stock of fin whales from all human-caused sources is 1.43, or 8.93% of the PBR. The 5-year (2007-2011) annual average annual average serious injury and mortality from all human-caused sources is 2.2 or 13.8% of the PBR. The total

annual human-related serious injury and mortality for this stock of fin whales is not less than 0.1 PBR for both time frames considered.

- The 14-year (1998-2011) average annual serious injury and mortality to the CA/OR/WA stock of humpback whales from all human sources is 4.31, or 38.2% of the PBR. The 5-year (2007-2011) average annual human-caused mortality or serious injury is 7.2 or 63.7% of the PBR. The total annual human-related serious injury and mortality for this stock of humpback whales is not less than 0.1 PBR for both time frames considered.
- The 14-year (1998-2011) average annual serious injury and mortality to the CA/OR/WA stock of sperm whales from all human sources is 0.79, or 52.6% of the PBR. The 5-year (2007-2011) average annual human-caused mortality or serious injury is 1.4 or 93.3% of the PBR. The total annual human-related serious injury and mortality for this stock of sperm whales is not less than 0.1 PBR for both time frames considered.

Criterion 1 was not satisfied because the total annual human-related serious injury for fin, humpback, and sperm whales are not less than 0.1 PBR of each stock for both time frames considered. As a result, the other criteria must be examined for the CA/OR/WA fin, humpback, and sperm whale stocks.

Criterion 2 Analysis

Criterion 2 would be satisfied if the total human-related serious injury and mortality are greater than PBR, and fisheries-related mortality is less than 0.1 PBR. This criterion was not satisfied because total human-related serious injury and mortality (detailed above) is less than

PBR, and total fisheries-related mortality (detailed below) is greater than 0.1 PBR for each stock (both time frames analyzed).

Criterion 3 Analysis

Unlike Criteria 1 and 2, which examine total human-caused serious injury and mortality relative to PBR, Criterion 3 compares total fisheries-related serious injury and mortality to PBR. Criterion 3 would be satisfied if the total fisheries-related serious injury and mortality (including state and federal fisheries) is greater than 0.1 PBR and less than 1.0 PBR for each stock, for each time frame considered and the populations of these stocks are considered to be stable or increasing.

The total fishery-related mortality and serious injury is a small portion of the CA/OR/WA fin whale stock's PBR (of 16): 3.8% of PBR for the 5-year average from 2007-2011, and 1.8% of PBR for the 14-year average from 1998-2011. The CA/OR/WA fin whale stock's PBR is calculated using a recovery factor of 0.3, and a minimum population size of 2,624; this population is growing at a rate of about 3%/year (a little less than the default maximum net growth rate for cetaceans of 4%). The likelihood that fin whales will be taken by the CA thresher shark/swordfish and/or WA/OR/CA sablefish pot fishery is low. Accordingly, Criterion 3 is satisfied for both time frames analyzed in determining that mortality and serious injuries of the CA/OR/WA fin whale stock incidental to commercial fishing would have a negligible impact on the stock because of individual review of data regarding the stock, including increased growth rate of the stock, limited increases in serious injury and mortality due to the relevant fisheries, and the level of human-caused mortality and serious injury is below the estimated PBR.

The fishery-related mortality and serious injury from all commercial fisheries for the CA/OR/WA humpback whale stock is estimated at 53.1% of PBR (of 11.3) for the 5-year

average from 2007-2011, and 31.9% of PBR for the 14-year average from 1998-2011. A total of two humpback whales were observed, estimated or assumed to have either been killed or injured in the two fisheries considered in this authorization, the CA thresher shark/swordfish DGN fishery and WA/OR/CA sablefish pot fishery, which is a small portion of the stock's PBR, which is calculated using a recovery factor of 0.3. The minimum population size is 1,878 and is growing at a rate of about 4%/year which is equal to the default maximum growth rate for cetaceans (4%). Accordingly, Criterion 3 is satisfied for both time frames analyzed in determining that mortality and serious injuries of the CA/OR/WA humpback whale stock incidental to commercial fishing would have a negligible impact on the stock because of individual review of data regarding the stock, including increased growth rate of the stock, limited increases in serious injury and mortality due to the relevant fisheries, and the level of human-caused mortality and serious injury is below the estimated PBR.

The fishery-related mortality and serious injury from all commercial fisheries for the CA/OR/WA sperm whale stock is estimated at 66.7% of PBR (of 1.5) for the 5-year average from 2007-2011, and 33.3% of PBR for the 14-year average from 1998-2011. A total of three sperm whales were observed, estimated or assumed to have either been killed or injured in the CA thresher shark/swordfish DGN fishery since 1998 and none have interacted with the WA/OR/CA sablefish pot fishery. The most recent population abundance estimate from 2008 is the lowest to date, in sharp contrast to the highest abundance estimate obtained from 2001 and 2005 surveys. However, there is no reason to believe that the population has declined; the most recent survey likely reflects inter-annual variability with the study area. Sperm whale distribution and relative abundance may be correlated to the abundance of their main prey items and the population of the CA/OR/WA sperm whale stock has fluctuated since 1979/80 without

apparent trend and appears relatively stable. The stock's PBR is calculated using a recovery factor of 0.1 (with a long term-average mortality and serious injury equal to PBR, 90% of the stock's net annual production would be reserved for recovery). The minimum population size is about 751 and is growing at a rate of about 2%/year which is one half of the default maximum growth rate for cetaceans (4%). Also, the infrequency of sperm whale interactions with the CA thresher shark/swordfish DGN fishery in the last 14 years (1998-2011) indicates that the likelihood that another sperm whale would be taken by this fishery is low (sperm whales have not interacted WA/OR/CA sablefish pot fishery). Thus, based on this information and the applicability of Criterion 3, NMFS determines that the mortality and serious injury incidental to commercial fisheries will have a negligible impact on the CA/OR/WA stock of sperm whales for both time frames analyzed.

In conclusion, based on the criteria outlined in 1999 (64 FR 28800), the 2011 Pacific SARs (Carretta et al. 2012) and the best scientific information and data available, NMFS has determined that for a period of up to three years, mortality and serious injury incidental to the CA thresher shark/swordfish DGN fishery and the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of sperm whales, the CA/OR/WA stock of humpback whales, and the CA/OR/WA stock of fin whales (i.e., the total fisheries-related serious injury and mortality is greater than 0.1 PBR and less than PBR for both time periods and the populations of these stocks are considered to be stable or increasing). Therefore, these identified commercial fisheries within the range of the CA/OR/WA fin, humpback, and sperm whale stocks may be permitted subject to their individual review and the certainty of relevant data, and provided that the other provisions of section 101(a)(5)(E) are met.

Description of Fisheries

The following are the Federally-authorized fisheries classified as Category II in the 2011 LOF, which are known to seriously injure or kill ESA-listed marine mammals incidental to commercial fishing operations. Detailed descriptions of those fisheries can be found in the NMFS (2012a) Final Biological Opinion on the groundfish fishery management plan, dated December 7, 2012, for the fisheries addressed in that Biological Opinion; the NMFS (2012b) draft Biological Opinion for the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh; currently in preparation; the final SARs (Carretta *et al.* 2012; Allen and Angliss 2011); and the draft NID (<http://swr.nmfs.noaa.gov/>). Certain aspects of the fisheries may be altered due to reasonable and prudent alternatives included in each of the biological opinions; however, these changes in fishing operations are not expected to result in increased levels of mortality and serious injury of marine mammals, including threatened and endangered species.

CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh)

Participants in the CA thresher shark/swordfish DGN fishery (≥ 14 in mesh) are also required to have a valid permit issued annually by the California Department of Fish and Wildlife. In accordance with MMPA section 118(c), only those vessels in the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) that have registered for a Marine Mammal Authorization Permit are authorized to take marine mammals incidental to their fishing operations. Vessels holding this permit must comply with the POCTRP and implementing regulations. Any vessel that violates regulations will be investigated. The estimate of the number of vessels in the fishery is a historical reference based upon the number of vessels that indicated intent to participate in the fishery and may not be an accurate estimate of the number of vessels actively engaged in fishing in any given year. The DGN fishery is a limited entry program, managed with gear, seasons, and area closures. The number of vessels participating in

the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) has decreased. In 2010, there were 73 permits issued, but currently there are only 27 active vessels (CDFG License and Revenue Branch, extracted July 14, 2011).

The CA thresher shark/swordfish DGN fishery targets swordfish and thresher shark. This fishery is a limited entry fishery with seasonal closures and gear restrictions. The CA thresher shark/swordfish DGN fishery operates outside of state waters to about 150 miles offshore ranging from the U.S./Mexico border in the south to the Oregon border in the north, depending on sea temperature conditions. Regulations restrict the fishery to waters outside 200 nm from February 1 through April 30, outside 75 nm from May 1 through August 14, and is allowed to fish inside 75 nm from August 15 through January 31. CA thresher shark/swordfish DGN vessels when targeting swordfish tend to set on warm ocean water temperature breaks, which do not appear along the California coast until late summer; therefore, because of these restrictions, vessels are not active during February, March, and April, and very little fishing effort occurs during the months of May, June, and July.

In 2001, a seasonal (15 August-15 November) area closure was implemented in the thresher shark/swordfish DGN fishery north of Point Conception, to protect leatherback turtles that feed in the area and were observed entangled in previous fishing seasons. Additional seasonal/area closures in southern California have been established in the thresher shark/swordfish DGN fishery to protect loggerhead turtles during a forecast or occurring El Niño event during the months of June, July and/or August. Information on the number of active permit holders was obtained from the “Status of the U.S. west coast fisheries for Highly Migratory Species through 2004; Stock Assessment and Fishery Evaluation” report, available from the Pacific Fishery Management Council website (www.pcouncil.org).

The NMFS's Southwest Region has operated an at-sea observer program in the CA thresher shark/swordfish DGN fishery since July 1990 to the present, and the California Department of Fish and Wildlife had operated a DGN observer program from 1980–90. The objectives of the NMFS Observer Program are to record, among other things, information on non-target fish species and protected species interactions. Information regarding the thresher shark/swordfish DGN fishery interactions with listed marine mammal species was drawn from Observer Program records for the calendar years 1990–2011 (NMFS 2012). Observer coverage of the thresher shark/swordfish DGN fleet targets 20 percent of the annual sets made in the fishery, with close to 100 percent of net retrievals monitored on observed trips for, among other things, species identification and enumeration.

WA/OR/CA Sablefish Pot Fishery

The WA/OR/CA sablefish pot fishery targets sablefish using trapezoid, conical, or rectangular steel frame traps (NMFS 2005), wrapped with 3.5 inch nylon webbing. The fishery generally sets gear in waters past the 100 fathom curve off the west coast of the U.S. The fishery is managed under regulations implementing the West Coast Groundfish FMP developed by the Pacific Fishery Management Council. There are two separate trap fisheries for sablefish, limited entry and open access. The limited entry fishery is further divided into: (1) vessels fishing in the limited entry fixed gear fishery with a limited entry permit endorsed for pot and/or longline gear, and (2) since 2011, vessels fishing in the limited entry trawl fishery with a limited entry permit endorsed for trawl gear but fishing with “non-trawl” gear including pot gear (called “gear switching” in the trawl fishery’s Shore-based Individual Fishing Quota (IFQ) Program).

The primary fishery, limited entry, is composed of a three tier system of cumulative landing quotas within a restricted season, from April 1 to October 31. Permits were assigned to a

tier based on landing history when the system originally began in 1998. There are 32 limited entry permits issued for the sablefish trap fishery on the U.S. west coast (NWFSC 2010).

Fishing outside of the primary season or after fulfillment of tier quota is allowed subject to daily and weekly trip limits (NWFSC 2010). The limited entry permits are currently associated with vessels spread throughout the Pacific Northwest from Northern California through Washington. Up to three permits may be stacked for cumulative landings on one vessel; including both trap and longline gear endorsements (NWFSC 2010). Accounting for stacking of permits, there were twenty-four vessels using traps to target sablefish in the 2009 season, with seven of those vessels using traps only (NWFSC 2010). The other seventeen used a combination of traps and longline to catch their quota of sablefish.

In addition to the limited entry fixed gear fishery, a vessel registered to a limited entry groundfish permit endorsed for trawl gear may fish in the Shorebased IFQ Program using pot gear (NMFS 2012 West Coast Groundfish IFQ Fishery Catch Summary 2011: First Look. Agenda Item F.6.b, Supplemental NMFS Report, March 2012 Pacific Fishery Management Council meeting). Using a gear other than trawl gear to fish in the Shorebased IFQ Program is called “gear switching.” The Shorebased IFQ Program began in 2011 and operates year round. In 2011, nine percent of the IFQ fishing trips were made by vessels using pot gear.

The open access fishery is available to fishermen year round and is subject to weekly trip limits. The estimated number of current participants in the open access fishery is 309. NOAA's Northwest Fisheries Science Center estimates 123 fishermen, longline and trap combined, participated in the open access sector in 2009 based on a query of the fish ticket records in the PacFIN landings database (NWFSC 2010).

In California, a general trap permit is required for the open access sector for sablefish and gear is set outside 150 fathoms, with an average depth of 190 fathoms. South of Point Arguello, near Santa Barbara, the minimum depth for setting traps targeting sablefish is 200 fathoms. There is no depth requirement north of Point Arguello. Daily logbook reporting is required by the state. Multiple traps are connected to a common ground line, 5/8th inch nylon line, at depths between 100 and 375 fathoms up to 600 fathoms with an average of 190 fathoms in California (NMFS 2010). Traps are spaced on average 20 fathoms apart, with a range of 15 to 40 fathoms (NMFS 2005). Limited entry permit holders will commonly fish 20 to 30 traps per string, as opposed to open access fishermen who fish several smaller strings of one to eight strings with three to four traps per string (NMFS 2010), each with a float line and buoy stick.

Conclusions for Proposed Permit

Based on the above assessment and as described in the accompanying draft NID, NMFS concludes that the incidental mortality and serious injury from the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) and the WA/OR/CA sablefish pot fishery will have a negligible impact on the CA/OR/WA stock of humpback whales, the CA/OR/WA stock of fin whales, and the CA/OR/WA stock of sperm whales. The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. The impacts on the human environment of continuing and modifying the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) (as part of the Highly Migratory Species fisheries) and the WA/OR/CA sablefish pot fishery (as part of the West Coast groundfish fisheries), including the taking of threatened and endangered species of marine mammals, were analyzed in: the Pacific Fishery Management Council Highly Migratory Species Fishery Management Plan final environmental impact statement (August 2003); the Pacific Fishery

Management Council Proposed Harvest Specifications and Management Measures for the 2013-2014 Pacific Coast Groundfish Fishery and Amendment 21-2 to the Pacific Coast Fishery Management Plan (September 2012); Risk assessment of U.S. West Coast groundfish fisheries to threatened and endangered marine species (NWFSC 2012); and in the Final Biological Opinion prepared for the West Coast groundfish fisheries (NMFS 2012a) and the draft Biological Opinion for the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) (NMFS 2012b), currently in preparation, pursuant to the ESA. Because this proposed permit would 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. Issuing the proposed permit would have no additional impact to the human environment or effects on threatened or endangered species beyond those analyzed in these documents. NMFS now reviews the remaining requirements to issue a permit to take the subject listed species incidental to the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) and WA/OR/CA sablefish pot fisheries.

Recovery Plans

Recovery Plans for humpback whales, fin whales, and sperm whales have been completed (see <http://www.nmfs.noaa.gov/pr/recovery/plans.htm#mammals>). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. Further, section 118(c)(5)(A) provides that registration of vessels in fisheries should, after appropriate consultations, be integrated and coordinated to the maximum extent feasible with

existing fisher licenses, registrations, and related programs. Participants in the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) and WA/OR/CA sablefish pot fisheries already provide the information needed by NMFS to register their vessels for the incidental take authorization under the MMPA either through the federal groundfish limited entry permit process of the federal Vessel Monitoring System. Therefore, vessel registration for an MMPA authorization is integrated through those programs in accordance with MMPA section 118.

Monitoring Program

The CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) has been observed since the early 1990s. Levels of observer coverage vary over years but are adequate to produce reliable estimates of mortality and serious injury of listed species (e.g., from 2000-2010, coverage ranged from 12.0 to 22.9 percent). As part of the West Coast groundfish fishery and Magnuson-Stevens Fishery Conservation and Management Act objectives, the WA/OR/CA sablefish pot fishery, as managed under the groundfish FMP, is observed at about 1- 6% per year. Accordingly, as required by MMPA section 118, a monitoring program is in place.

Take Reduction Plans

Subject to available funding, MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) in cases where a strategic stock interacts with a Category I or II fishery. The stocks considered for this permit are designated as strategic stocks under the MMPA because they are listed as threatened or endangered under the ESA. In 1996, a take reduction team (TRT) was convened to develop a TRP to address the incidental taking of several strategic stocks in the CA thresher shark/swordfish drift gillnet fishery. A POCTRP was implemented, through regulations, in October, 1997 (62 FR 51813) and has been in place ever since. These strategic stocks also interact with the WA/OR/CA sablefish pot/trap fishery and

other Category II fisheries described above, and a potential TRP is in the development phase. The short- and long-term goals of a TRP are to reduce mortality and serious injury of marine mammals incidental to commercial fishing to levels below PBR and to a zero mortality rate goal (indicated by meeting the threshold for placement in the annual LOF Category III), respectively. MMPA section 118(b)(2) states that fisheries maintaining such mortality and serious injury levels are not required to further reduce their mortality and serious injury rates. However, the obligations to develop and implement a TRP are subject to the availability of funding. MMPA section 118(f)(3) (16 U.S.C. 1387(f)(3)) contains specific priorities for developing TRPs. NMFS has insufficient funding available to simultaneously develop and implement TRPs for all stocks that interact with Category I or Category II fisheries. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS used the most recent SARs and LOF as the basis to determine its priorities for establishing TRTs and developing TRPs. Through this process, NMFS evaluated the CA/OR/WA stocks of humpback, fin, and sperm whales, and identified them as lower priorities compared to other marine mammal stocks and fisheries for establishing TRTs, based on population trends of each stock and mortality and serious injury levels incidental to commercial fisheries. In addition, NMFS is currently collecting data to categorize fixed gear fisheries and assess their risk to large whales off the U.S. west coast. Accordingly, given these factors and NMFS' priorities, implementation of the developing TRP for the WA/OR/CA sablefish pot trap fishery and other similar Category II fisheries will be deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for establishing new TRPs.

As noted in the summary above, all of the requirements to issue a permit to the following Federally-authorized fisheries have been satisfied: the CA thresher shark/swordfish DGN fishery (≥ 14 inch mesh) and WA/OR/CA sablefish pot fishery. Accordingly, NMFS proposes to issue a

permit to participants in these Category II fisheries for the taking of CA/OR/WA humpback whales, CA/OR/WA fin whales, and CA/OR/WA sperm whales incidental to the fisheries' operations. As noted under MMPA section 101(a)(5)(E)(ii), no permit is required for vessels in Category III fisheries. For incidental taking of marine mammals to be authorized in Category III fisheries, any injuries or mortality must be reported to NMFS. NMFS solicits public comments on the proposed permit and the preliminary determinations supporting the permit.

Dated: May 3, 2013.

Helen M. Golde,
Acting Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 2013-10913 Filed 05/07/2013 at 8:45 am; Publication Date: 05/08/2013]