

APPENDIX A
ADVANCED NOTICE OF PROPOSED RULEMAKING
NOTICE OF INTENT

listed in Exhibit A of Office of Management and Budget (OMB) Circular A–21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required, however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than \$28.5 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of \$28.5 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$28.5 million or more in its most recent cost accounting period, of which, at least one award exceeded \$1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

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[FR Doc. 05–23647 Filed 12–9–05; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 051110296–5296–01; I.D. 102405A]

RIN 0648–AU02

Protecting Spinner Dolphins in the Main Hawaiian Islands From Human Activities that Cause “Take,” as Defined in the Marine Mammal Protection Act and Its Implementing Regulations, or To Otherwise Adversely Affect the Dolphins

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

ACTION: Advance notice of proposed rulemaking.

SUMMARY: NMFS is considering whether to propose regulations to protect wild spinner dolphins (*Stenella longirostris*) in the main Hawaiian Islands from “take,” as defined in the Marine Mammal Protection Act (MMPA) and its

implementing regulations, or to otherwise adversely affect the dolphins. The scope of this advance notice of proposed rulemaking (ANPR) encompasses the activities of any person or conveyance that may result in the unauthorized taking of spinner dolphins and/or that may diminish the value to the dolphins of habitat routinely used by them for resting and/or that may cause detrimental individual-level and population-level impacts. The proposed regulation would apply only to the main Hawaiian Islands and only to spinner dolphins. NMFS requests comments on whether—and if so, what type of—conservation measures, regulations, and, if necessary, other measures would be appropriate to protect spinner dolphins in the main Hawaiian Islands from the effects of these activities.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than January 11, 2006.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: 0648–

AU02.NOAA@noaa.gov. Include in the subject line the following document identifier: 0648–AU02–NOA.

- Federal e-rulemaking Portal: <http://www.regulations.gov>.

- Mail: Marine Mammal Branch Chief, Protected Resources Division, Pacific Islands Regional Office, National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT:

Chris Yates or Jennifer Sepez, Pacific Islands Regional Office, 808–944–2105; or Trevor Spradlin, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

Viewing wild marine mammals in Hawaii is a popular recreational activity for both tourists and residents alike. In the past, most recreational viewing focused on humpback whales (*Megaptera novaeangliae*) during the winter months when the whales migrate from their feeding grounds off the coast of Alaska to Hawaii’s warm and protected waters to breed and calve. However, in recent years, recreational activities have increasingly focused on viewing small cetaceans, with a particular emphasis on spinner dolphins (*Stenella longirostris*), which are routinely found close to shore in shallow coves and bays and other areas throughout the main Hawaiian Islands. NMFS is concerned that some of these activities cause unauthorized taking of dolphins, diminish the value to the dolphins of habitat routinely used by

them for resting, and cause detrimental individual-level and population-level impacts.

The biology and behavior of Hawaiian spinner dolphins has been well documented in the scientific literature. Hawaiian spinner dolphins are identified as a race of Pacific spinner dolphins found in and around the Hawaiian Islands, including both the main Islands of Hawaii and the Northwestern Hawaiian Islands (Norris *et al.* 1994, page 17). Hawaiian spinner dolphins routinely utilize shallow coves and bays and other areas close to shore during the day to rest, care for their young and avoid predators before traveling to deeper water at night to hunt for food (Würsig *et al.* 1994, Norris 1994). As the dolphins begin or end their resting period, they engage in aerial spinning and leaping behaviors that are noticeable from shore (Würsig *et al.* 1994). However, when they are in a period of deep rest, their behavior consists of synchronous dives and extended periods swimming in quiet formation along the shallow bottom (see: Norris and Dohl 1980, Norris *et al.* 1985, Wells and Norris 1994, Würsig *et al.* 1994).

Scientific research studies have documented human disturbance of Hawaiian spinner dolphins during their resting periods along the west coast of the Big Island of Hawaii, most notably in and around Kealahou Bay. Norris and Dohl (1980) noted that “cruise boats” would seek out and run through groups of spinner dolphins during an initial study of the dolphins in 1970, and in follow up research, Norris *et al.* (1985) found that spinner dolphins were particularly sensitive to disturbance during the early stage of their entry into the bay. Forest (2001) compared sightings records of spinner dolphins in Kealahou Bay from 1979–1980 and 1993–1994, and found that the dolphins were utilizing the bay and engaging in aerial behaviors less frequently than before, and suggested increasing human disturbance as a cause. Courbis (2004) reported high levels of vessel and swimmer traffic in Kealahou Bay and neighboring Honaunau Bay and Kauhako Bay, and found that spinner dolphins exhibited decreased aerial activity during their entry and exit into Kealahou Bay when compared to previous studies, as well as increased aerial activity during mid-day when dolphins typically rest. Spinner dolphins in Kealahou Bay also appeared to have shifted their preferred resting area in response to vessel and swimmer presence. In Kauhako Bay, dolphins were documented avoiding swimmers and leaving the bay in

response to being followed, while in Honaunau Bay, dolphins were documented to spend more time at the mouth of the bay or in deep water at the center of the bay when swimmers were present. Östman-Lind *et al.* (2004) found that human disturbance was highest in mid-morning when spinner dolphins begin their rest period, and that secondary resting areas with less vessel traffic were utilized more than had been previously observed, and suggested the dolphins have been displaced from their primary resting areas. In addition, Ross (2001) found that Hawaiian spinner dolphins around Midway Atoll in the Northwest Hawaiian Islands exhibited short-term behavioral changes in response to vessels at distances of 300 meters and 100 meters.

NMFS is concerned that displacement from primary resting areas has the potential for adverse impacts on the dolphins for a number of reasons, including that these secondary resting areas may not provide for the same quality of rest and protection that primary areas do and that the activities that displaced the dolphins from primary areas are likely to follow them. NMFS scientists are concerned about the potential for individual-level and population-level effects because of anthropogenic activities. NMFS has received an increasing number of complaints from constituents alleging that spinner dolphins in the main Hawaiian Islands are routinely being disturbed by people attempting to closely approach and interact with the dolphins by vessel (motor powered or kayak) or in the water ("swim-with-wild-dolphin" activities). Concerns have been expressed by officials from the Hawaii Department of Land and Natural Resources and the U.S. Marine Mammal Commission, as well as representatives of the Native Hawaiian community, scientific researchers, wildlife conservation organizations, public display organizations, and some commercial tour operators.

Additionally, there are growing public safety concerns associated with human-dolphin interactions. Although there are no known reports of Hawaiian spinner dolphins injuring humans, people have been seriously injured while trying to interact with various species of marine mammals in the wild, including species of dolphins (Webb 1978, Shane *et al.* 1993, NMFS 1994, Wilson 1994, Orams *et al.* 1996, Seideman 1997, Christie 1998, Santos 1997, Samuels and Bejder 1998, Samuels and Bejder 2004, Samuels *et al.* 2000). In addition, researchers have documented Hawaiian spinner dolphins behaving aggressively

towards people in the water by charging and making threat displays (Norris *et al.* 1985, Johnson and Norris 1994). There is also a potential risk of shark attack, since sharks prey upon spinner dolphins and often are seen with them along the coast (Johnson and Norris 1994, Norris 1994). In June 2003, an adult male swimmer was attacked by a shark while trying to swim with spinner dolphins off the coast of Oahu. The man suffered injuries to his leg, which required medical attention (Hoover and Espanol 2003).

NMFS encourages members of the public to view and enjoy spinner dolphins in the main Hawaiian Islands in ways that are consistent with the provisions of the MMPA, and supports responsible wildlife viewing as articulated in agency guidelines (see Web citations below). NMFS is concerned that some activities occurring in Hawaii are not in accordance with these guidelines, and cause unauthorized taking of spinner dolphins, diminish the value to the dolphins of habitat routinely used by them for resting, or cause detrimental individual-level and population-level impacts to these dolphins.

Current MMPA Prohibitions and NMFS Guidelines and Regulations

The Marine Mammal Protection Act, 16 U.S.C. 1361 *et seq.*, generally prohibits the "take" of marine mammals. Section 3(13) of the MMPA defines the term "take" as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." Except with respect to military readiness activities and certain scientific research activities, the MMPA defines the term "harassment" as "any act of pursuit, torment, or annoyance which—(i) has the potential to injure a marine mammal or marine mammal stock in the wild, [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]."

In addition, NMFS regulations implementing the MMPA further describe the term "take" to include: "the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild" (50 CFR 216.3). The MMPA provides limited exceptions to the prohibition on "take" for activities such as scientific research, public display,

and incidental take in commercial fisheries. Such activities require a permit or authorization, which may be issued only after a thorough agency review.

Although Hawaiian spinner dolphins are not a listed species under the Endangered Species Act (ESA), there are specific regulations for some ESA-listed marine mammals which address interactions with humans in the wild. These regulations prohibit approaches within 3 nautical miles (5.5 km) of particular Steller sea lion rookeries in the Aleutian Islands and Gulf of Alaska (50 CFR 223.202), approaches closer than 100 yards (91.4 m) to humpback whales in Hawaii, approaches closer than 100 yards (91.4 m) to humpback whales in Alaska, and approaches closer than 500 yards (460 m) to right whales in the North Atlantic (50 CFR 224.103). Documentation for these latter two regulations (66 FR 29502, May 31, 2001, and 62 FR 6729, February 13, 1997) cites rulemaking authority under both the ESA and the MMPA.

For both ESA-listed species and for MMPA-protected species, wildlife viewing must be conducted in a manner that does not cause "take." This is consistent with the philosophy of responsible wildlife viewing advocated by many federal agencies to unobtrusively observe the natural behavior of wild animals in their habitats without causing disturbance (see <http://www.watchablewildlife.org/> and http://www.watchablewildlife.org/publications/marine_wildlife_viewing_guidelines.htm).

Each of the six NMFS Regions has developed recommended viewing guidelines to educate the general public on how to responsibly view marine mammals in the wild and avoid causing a "take." These guidelines are available on line at: http://www.nmfs.noaa.gov/prot_res/MMWatch/MMViewing.html. The guidelines developed by the NMFS Pacific Islands Regional Office for marine mammals in Hawaii are also available at: http://www.nmfs.noaa.gov/prot_res/MMWatch/hawaii.htm. The Regional Office viewing guidelines for Hawaii recommend that people view wild dolphins from a safe distance of at least 50 yards (45 m) and refrain from trying to chase, closely approach, surround, swim with, or touch the animals. To support the guidelines in Hawaii, NMFS has partnered with the State of Hawaii and the Hawaiian Islands Humpback Whale National Marine Sanctuary over the past several years to promote safe and responsible wildlife viewing practices through the development of outreach materials, training workshops and public service

announcements, NMFS' education and outreach efforts have also been supported by a partnership with the Watchable Wildlife program, a consortium of Federal and State wildlife agencies and wildlife interest groups that encourages passive viewing of wildlife from a distance for the safety and well-being of both animals and people (Duda 1995, Oberbillig 2000).

However, despite the regulations, guidelines and outreach efforts, interactions through swim-with-dolphins programs continue to occur and are increasing in Hawaii. Advertisements on the Internet and in local media in Hawaii promote activities that contradict the NMFS guidelines. NMFS has received letters from the Marine Mammal Commission (MMC), members of the scientific research community, environmental groups, the public display community, and members of the general public expressing the view that swimming with and other types of interactions with wild marine mammals have the potential to harass and/or disturb the animals by causing injury or disruption of normal behavior patterns. NMFS has also received inquiries from members of the public and commercial tour operators requesting clarification on NMFS' policy on these matters.

The MMC sponsored a literature review by Samuels *et al.* (2000) to compile information regarding human interactions with wild dolphins. Upon review of the report, the MMC stated:

The information and analyses in the report provide compelling evidence that any efforts to interact intentionally with dolphins in the wild are likely to result in at least Level B harassment and, in some cases, could result in the death or injury of both people and marine mammals.

The MMC subsequently recommended that NMFS "promulgate regulations specifying that any activity intended to enable in-water interactions between humans and dolphins in the wild constitutes a taking and is prohibited" (Letter from MMC to NMFS dated May 23, 2000).

In 2002, NMFS published an ANPR requesting comments from the public on what types of regulations and other measures would be appropriate to prevent harassment of marine mammals in the wild caused by human activities directed at the animals (67 FR 4379, January 30, 2002). The 2002 ANPR was national in scope and covered all species of marine mammals under NMFS' jurisdiction (whales, dolphins, porpoises, seals and sea lions), and requested comments on ways to address concerns about the public and commercial operators closely

approaching, swimming with, touching or otherwise interacting with marine mammals in the wild. Several potential options were proposed for consideration and comment, including: (1) Codifying the current NMFS Regional marine mammal viewing guidelines into regulations; (2) codifying the guidelines into regulations with additional improvements; (3) establishing minimum approach rules similar to the ones under the ESA regulations for humpback whales in Hawaii and Alaska and North Atlantic right whales; and (4) restricting activities of concern similar to the MMPA regulation prohibiting the public from feeding or attempting to feed wild marine mammals. The 2002 ANPR specifically mentioned the concerns about Hawaiian spinner dolphins and increasing human interactions. Over 500 comments were received on the 2002 ANPR regarding human interactions with wild marine mammals in United States waters and along the nation's coastlines. A portion of the comments specifically addressed Hawaii concerns and recommended a wide spectrum of measures from no action to restricting swim with activities through regulations or time-area closures.

Request for Comments

NMFS is requesting comments on whether—and if so, what type of—conservation measures, regulations, and, if necessary, other measures would be appropriate to protect spinner dolphins in the main Hawaiian Islands from human activities that result in the unauthorized taking of spinner dolphins and/or that may diminish the value to the dolphins of habitat routinely used by them for resting and/or that may cause detrimental individual-level and population-level impacts. If a rule were proposed, the agency could further delineate the definition of "take" in the Code of Federal Regulations for situations involving Hawaiian spinner dolphins, focusing on the take of individual dolphins. The agency could also design regulations to address possible adverse effects at the population level, where repeated intrusions into resting areas cumulatively have the potential to disrupt the behavioral patterns within the population of dolphins and/or have the potential to injure the stock as a whole through displacement of animals from their preferred habitat. The agency could also act to protect essential habitats, including mating grounds and areas of similar significance to the dolphins.

NMFS offers several possible options for consideration and comment:

Codify the current NMFS Pacific Islands Regional Office's marine mammal viewing guidelines—Codifying the guidelines as regulations would make them requirements rather than recommendations, and would provide for enforcement of these provisions and penalties for violations.

Codify the current NMFS Pacific Islands Regional Office's marine mammal viewing guidelines with improvements—The current guidelines could be revised to more clearly address specific activities of concern, such as those discussed below, and then codified as enforceable regulations.

Establish minimum approach rule—Similar to the minimum approach rules for humpback whales in Hawaii and Alaska, and right whales in the North Atlantic (50 CFR 224.103; 66 FR 29502, May 31, 2001), a limit could be established by regulation to accommodate a reasonable level of dolphin viewing opportunities while minimizing the potential detrimental impacts from humans. If establishing a minimum approach rule is appropriate, then NMFS would have to consider whether the current guideline of 50 yards is appropriate for this regulation. NMFS would consider exceptions for situations in which marine mammals approach vessels or humans as well as other situations in which approach is not reasonably avoidable.

Restrict individual activities of concern—Similar to the prohibition on feeding wild marine mammals (50 CFR 216.3), a regulation further delineating the definition of "take" for the case of Hawaiian spinner dolphins could clarify which specific activities are prohibited. Such activities could include actions engaged in by individuals, *e.g.*, swimming with, touching (either directly or with an object), or otherwise acting on or with a Hawaiian spinner dolphin in the wild. It could also include operating a vessel or providing other platforms from which such interactions are conducted or supported.

Restrict vessel activities of concern—Activities of concern engaged in by vessels could also be prohibited through a regulation further delineating the definition of "take" for the case of Hawaiian spinner dolphins. These activities of concern could include actions engaged in by vessels, *e.g.*, the use of vessels to herd dolphins, surround dolphins, or otherwise prevent a reasonable means of escape, to "leapfrog" dolphins by positioning in their predictable paths, separate calves from attending adults, approach at or above specified speeds, or to "run through" a group of dolphins in order to elicit bow-wake riding.

Establish time-area closures in resting bays—Similar to the prohibitions used to protect fish stocks or habitat, a regulation restricting human access to specific areas could be established. These restrictions could be for full-time, or limited to certain times of the day when dolphins have the most potential to be present. They could: restrict all human entry to the area; restrict only specified types of activities; restrict human access to an entire area or a particular zone within an area; or a closure could be any combination of the above parameters.

NMFS also recognizes that the most appropriate regulations may be some combination of the above measures, or that additional possibilities may exist.

The geographic scope of these regulations, if proposed, would be the near shore habitats off the main Hawaiian Islands, including the Big Island of Hawaii, Maui, Kohoolawe, Lanai, Molokai, Oahu, Kauai, and Niihau, and their nearby land or land-like masses (e.g., Molokini, Kaohiakipu, etc.). These are the locations where activities of concern are concentrated. The Northwestern Hawaiian Islands (NWHI) do not currently have a significant level of activities of concern, and NMFS feels the remoteness of these islands makes it unlikely that they will develop at significant levels in the future. In addition, a marine sanctuary is contemplated which would encompass the NWHI. NMFS requests comments on the geographic scope of this ANPR, including whether the agency should be considering a larger or smaller overall geographic scope to protect Hawaiian spinner dolphins.

NMFS invites comment on the above options and other possible measures that will help the agency decide what type of regulations, if any, would be most appropriate to consider for protecting spinner dolphins in the main Hawaiian Islands from human activities that cause unauthorized taking of spinner dolphins, diminish the value to the dolphins of habitat routinely used by them for resting, or cause detrimental individual-level and population-level impacts to these dolphins.

Classification

This advance notice of proposed rulemaking was determined to be significant for purposes of E.O. 12866.

Dated: December 6, 2005.

William T. Hogarth,

*Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

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[FR Doc. 05-23928 Filed 12-9-05; 8:45 am]

BILLING CODE 3510-22-P

results of the sunset review no later than December 19, 2005.

FOR FURTHER INFORMATION CONTACT: Jun Jack Zhao or Sean Carey, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-1396 or (202) 482-3964, respectively.

SUPPLEMENTARY INFORMATION:

Extension of Final Results:

On June 1, 2006, the Department of Commerce (the Department) published, in the **Federal Register**, the notice of initiation of the second five-year sunset review of the countervailing duty order on OCTG from Italy, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). See *Initiation of Five-year ("Sunset") Reviews*, 71 FR 31153 (June 1, 2006). On July 21, 2006, the Department determined that the substantive responses filed by the Government of Italy (GOI), the European Union/Delegation of the European Commission (EU) and Dalmine S.p.A. (Dalmine) were inadequate and that this sunset review would be conducted on an expedited basis. See July 21, 2006 memo from the sunset team to Stephen J. Claeys, through Barbara E. Tillman, *Adequacy Determination: Sunset Review of the Countervailing Duty Order on Oil Country Tubular Goods from Italy (Second Review)*. This memorandum is on file in the Central Records Unit, room B-099 of the main Commerce building. The Department's final results of this review were scheduled for September 29, 2006; however, the Department needs additional time to make its final determination.

In accordance with section 751(c)(5)(B) of the Act, the Department may extend the period of time for making its final determination in a sunset review by not more than 90 days, if it determines that the review is extraordinarily complicated. The Department needs additional time to consider issues related to whether a countervailable subsidy is likely to continue or recur if the order is revoked. Specifically, the Department has determined that it is necessary to verify certain of the information provided by respondents in this review. Therefore, the Department will extend the deadline in this proceeding, and, as a result, intends to issue the final results of the sunset review of the countervailing duty order on OCTG from Italy, no later than December 19, 2006, an additional 81

days from the date of initiation of this review.

This notice is issued and published in accordance with sections 751(c)(5)(B) and (C) of the Act.

Dated: September 26, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6-16232 Filed 9-29-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Amendment to Notice

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: This notice amends the June 30th notice (71 FR 37543) to extend the deadline to October 27, 2006, for submission of applications for the Summit only portion of the Department of Commerce Under Secretarial Business Development Mission to India and to raise the ceiling on the number of participants for the Summit portion of the Mission to 230. These changes are implemented in response to overwhelming interest on the part of the U.S. business community and an agreement on the part of the Summit sponsors in India to accommodate an increased participant base. The application for the Summit portion of the India Business Development Mission is available in a downloadable fax-back version on the event Web site: <http://export.gov/indiamission>. The application may also be completed and submitted online. Leaders of U.S. business, industry, education, and state and local government are among those encouraged to take part in the Summit, where strategic breakout sessions will provide access to India's high-level business, industry, and government representatives and insights into the country's trade and investment climate. The deadline to apply for the post-Summit spin-off missions to be held in Bangalore, Kolkata, Chennai, Hyderabad, Mumbai, and New Delhi remains October 2, 2006. The spin-off missions are open to qualified U.S. business representatives seeking one-on-one business appointments with prospective agents, distributors, partners, and end-users. Applications for the spin-off missions are available on the above-cited event Web site. Selection criteria and procedures for the Summit and spin-off missions are included in the Trade Mission Statement on the Web site.

FOR FURTHER INFORMATION CONTACT:

Nancy Hesser at the Department of Commerce in Washington, DC. Telephone: (202) 482-4663. Fax: (202) 482-2718. Both downloadable and online versions of the application for the Summit and the spin-off missions are available on the event Web site: <http://export.gov/indiamission>.

Nancy Hesser,

Manager, Commercial Service Trade Missions Program.

[FR Doc. E6-16221 Filed 9-29-06; 8:45 am]

BILLING CODE 3510-25-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090706D]

Protection of Marine Mammals; Notice of Intent to Prepare an Environmental Impact Statement

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

ACTION: Notice of intent to prepare and environmental impact statement (EIS); notice of public scoping meetings.

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare an EIS to assess the potential impacts on the human environment resulting from proposed regulations to protect wild spinner dolphins (*Stenella longirostris*) in the main Hawaiian Islands from "take," as defined in the Marine Mammal Protection Act (MMPA) and its implementing regulations; and announces public scoping meetings.

DATES: Four public scoping meetings are scheduled to obtain comments on the scope of issues to be addressed in the EIS. See **SUPPLEMENTARY INFORMATION** for specific times and locations. In addition to obtaining comments in the public scoping meetings, NMFS will also accept written and electronic comments. Comments must be received no later than 5 p.m. h.s.t. on November 24, 2006.

ADDRESSES: Written comments on the scope of the EIS should be submitted to Chris E. Yates, Assistant Regional Administrator for Protected Resources, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814. Written comments may also be submitted by e-mail to Spinner.Scoping@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Van Atta, NMFS, Pacific Islands Region; telephone: (808) 944-2257; fax: (808)

944-2142; e-mail: alecia.vanatta@noaa.gov. For information regarding the EIS process, contact Jayne LeFors, NMFS, Pacific Islands Region; telephone: (808) 944-2277; fax: (808) 944-2142; e-mail: jayne.lefors@noaa.gov.

SUPPLEMENTARY INFORMATION:

Public Scoping Meetings – Specific Times and Locations

The Honolulu, Oahu, HI scoping meeting: October 17, 2006, 6 p.m. - 9 p.m. The meeting location is the McCoy Pavilion, Ala Moana Regional Park, 1201 Ala Moana Boulevard, Honolulu, HI, 96814, telephone: (808) 823-1636.

The Kapa'a, Kauai, HI scoping meeting: October 19, 2006, 6 p.m. - 9 p.m. The meeting location is the Aloha Beach Resort Kauai, Pi'ikoi Room, 3-5920 Kuhio Highway, Kapa'a, HI, 96746, telephone: (808) 823-1636.

The Kihei, Maui, HI scoping meeting: October 25, 2006, 6 p.m. - 9 p.m. The meeting location is the Hawaiian Islands Humpback Whale National Marine Sanctuary, Headquarters office, 726 S. Kihei Road, Kihei, HI, 96753, telephone: (808) 879-2818 or (800) 831-4888.

The Kailua-Kona, HI scoping meeting: October 26, 2006, 6 p.m. - 9 p.m. The meeting location is King Kamehameha's Kona Beach Hotel, 75-5660 Palani Road, Kailua-Kona, HI, 96740, telephone: (808) 329-2911.

These meetings are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jayne LeFors, (808) 944-2277 or fax (808) 944-2142 at least 5 days before the scheduled meeting date.

Background

Viewing wild marine mammals in Hawaii is a popular recreational activity for both tourists and residents alike. In the past, most efforts focused on viewing humpback whales (*Megaptera novaeangliae*) during the winter months when the whales migrate from their feeding grounds off the coast of Alaska to Hawaii's warm and protected waters to breed and calve. However, in recent years, increasing efforts have focused on viewing small cetaceans, with a particular emphasis on Hawaiian spinner dolphins (*Stenella longirostris*), which can be routinely found close to shore in shallow coves and bays throughout the main Hawaiian Islands. NMFS has received an increasing number of complaints from constituents charging that spinner dolphins are being routinely disturbed by people attempting to closely approach and interact with the dolphins by vessel

(motor powered or kayak) or in the water ("swim-with-wild-dolphin" activities). Concerns have been expressed by officials from the Hawaii Department of Land and Natural Resources and the U.S. Marine Mammal Commission (MMC), as well as various members of the public, including representatives of the Native Hawaiian community, scientific researchers, wildlife conservation organizations, public display organizations, and some commercial tour operators.

NMFS encourages members of the public to view and enjoy Hawaiian spinner dolphins, and supports responsible wildlife viewing as articulated in agency guidelines (see web citation below). However, activities currently conducted by individuals and by commercial "swim-with" programs frequently do not operate in accordance with these guidelines. NMFS is concerned that activities occurring in Hawaii have the potential to cause detrimental individual and population-level impacts to these dolphins.

Hawaiian spinner dolphins routinely utilize shallow coves and bays close to shore during the day to rest, care for their young, and avoid predators, before traveling to deeper water at night to hunt for food. As the dolphins begin or end their resting period in a bay, they engage in aerial spinning and leaping behaviors that are noticeable from shore. However, when they are in a period of deep rest, their behavior consists of synchronous dives and extended periods swimming in quiet formation along the shallow bottom (Norris and Dohl 1980; Norris *et al.*, 1985; Wells and Norris 1994; Wursig *et al.* 1994).

Scientific research studies have documented the effects of human disturbance on dolphins. In a recently published study conducted at Oahu's Makua Beach, Danil *et al.* (2005) found that Hawaiian spinner dolphins departed the resting bay earlier and spent shorter diving periods, which was indicative of delayed or compressed resting behavior, while swimmers were present in the bay.

Additionally, a study in western Australia documented a significant decline in wild bottlenose dolphin (*Tursiops* sp.) abundance resulting from long-term exposure to dolphin tour operations (Bejder *et al.*, 2006; Bejder *et al.*, In press). While there are some major differences between bottlenose dolphins and spinner dolphins, their responses to exposure to tour operations would likely be similar. The authors suggest that similar declines would be devastating for small, closed, resident, or endangered cetacean populations like spinner dolphins.

Current MMPA Prohibitions and NMFS Guidelines and Regulations

The Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.* (MMPA) prohibits the "take" of marine mammals. Section 3(13) of the MMPA defines the term "take" as "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal." Section 3(18)(A) of the MMPA defines the term "harassment" as "any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

In addition, NMFS regulations implementing the MMPA have amended the term "take" to include "the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in disturbing or molesting a marine mammal; and feeding or attempting to feed a marine mammal in the wild" (50 CFR 216.3).

Although Hawaiian spinner dolphins are not a listed species under the Endangered Species Act (ESA), NMFS has implemented specific regulations for some ESA-listed marine mammals which address interactions with humans in the wild. These regulations prohibit approaches closer than 100 yards (91.4 m) to humpback whales in Hawaii and Alaska, and approaches closer than 500 yards (460 m) to right whales in the North Atlantic (50 CFR 224.103), as well as approaches within 3 nautical miles (5.5 km) of particular Steller sea lion (*Eumetopias jubatus*) rookeries in the Aleutian Islands and Gulf of Alaska (50 CFR 223.202). However, specific approach distance regulations have not yet been implemented under the MMPA for other species of marine mammals.

The MMPA provides limited exceptions to the prohibition on "take" for activities such as scientific research, public display, and incidental take in commercial fisheries. Such activities require a permit or authorization, which may be issued after a thorough agency review. In some cases, the activities requiring a permit and receiving agency review (e.g., photo identification research) are significantly less intrusive than certain known tourist activities (e.g., swimming with wild dolphins). However, the MMPA does not provide an exception to the "take" prohibition for commercial or recreational wildlife

viewing activities, so they are not eligible for permits or authorizations. Instead, wildlife viewing should be conducted in a manner that does not cause "take," which is consistent with the general philosophy of responsible wildlife viewing to unobtrusively observe the natural behavior of wild animals in their habitats without causing disturbance.

Each of the five NMFS Regions has developed recommended viewing guidelines to educate the general public on how to responsibly view marine mammals in the wild and avoid causing a "take" by "harassment." The guidelines developed by the NMFS Pacific Islands Regional Office for marine wildlife in Hawaii are available at: <http://www.nmfs.noaa.gov/pr/education/hawaii/>.

The guidelines for Hawaii recommend that people view wild dolphins from a safe distance of at least 50 yards (45 m) and to refrain from trying to chase, closely approach, surround, swim with, or touch the animals. To support the guidelines in Hawaii, NMFS has partnered with the State of Hawaii and the Hawaiian Islands Humpback Whale National Marine Sanctuary over the past several years to promote safe and responsible wildlife viewing practices through the development of outreach materials, training workshops, and public service announcements. NMFS' education and outreach efforts have also been supported by a partnership with the Watchable Wildlife program, a consortium of Federal and state wildlife agencies and wildlife interest groups that encourages passive viewing of wildlife from a distance for the safety and well-being of both animals and people (Duda 1995, Oberbillig 2000, Clark 2006).

However, despite the regulations, guidelines, and outreach efforts, extensive interactions with wild spinner dolphins continue to occur in Hawaii. Advertisements on the internet and in local media in Hawaii promote activities that clearly contradict the NMFS guidelines and appear to depict harassment of the animals. NMFS has also received inquiries from members of the public and commercial tour operators requesting clarification on NMFS' policy and the MMPA restrictions on closely approaching, swimming with, or interacting with wild cetaceans.

In response to the concerns expressed about spinner dolphin disturbance, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on December 12, 2005 (70 FR 73426) to alert the public that it would be considering whether to implement

additional regulations or other conservation measures as appropriate to protect wild spinner dolphins in the main Hawaiian Islands from people attempting to closely approach and interact with the dolphins by vessel (motor powered or kayak) or in the water ("swim-with-wild-dolphin" activities). The ANPR with the complete background information can be found at <http://swr.nmfs.noaa.gov/pir/index.htm> along with the scientific literature cited.

Public comment was solicited on a range of alternatives being considered to address the issue. A total of 191 comments were received from a wide range of stakeholders and recommended a variety of actions for NMFS to consider, ranging from no regulations to permanent closure of areas the dolphins use for resting and shelter. Based upon the comments received during this process, the original alternatives were further refined to provide a basis for the alternatives to be analyzed in the EIS.

The EIS will consider the proposed action and several alternatives to protect wild spinner dolphins in the main Hawaiian Islands from human activities that may result in their unauthorized taking, or that may cause detrimental individual or population-level impacts by diminishing the value of habitat they routinely use for resting. NMFS is seeking public comment on both the proposed action and the preliminary alternatives during the public scoping period, and encourages the public to submit information on these and other potential alternatives for consideration.

Proposed Action

NMFS has identified the proposed action as instituting partial (time-area based) closures for certain specified spinner dolphin resting habitat (or a subset thereof) in the main Hawaiian Islands. Under the proposed action, NMFS would identify the primary areas utilized by spinner dolphins for resting habitat on each of the main Hawaiian Islands, and would institute closures of these areas during certain time periods. Closure types to be considered could include entire bays, but only during peak spinner dolphin resting hours (e.g., between 9 a.m. and 2 p.m.), or closures only within specified zones within spinner dolphin resting habitat (e.g., as demarcated by buoys). Such closures would attempt to provide optimal protection for spinner dolphins and their resting habitat, while minimizing the impact on ocean users. Exemptions within certain bays for harbors transit (ingress and egress of vessels), traditional cultural practices, fishing activities, emergency situations, and other activities would be considered.

Alternatives

NMFS has also identified four additional alternatives to the proposed action: (1) maintaining the status quo (the No Action alternative); (2) establishing a minimum distance limit inside which approach of spinner dolphins would be unlawful; (3) regulating certain specified human behavior within NMFS-identified spinner dolphin resting habitat; and (4) instituting a complete closure of NMFS-identified spinner dolphin resting habitat (or a subset thereof).

Alternative 1

Under the No Action alternative, which is required by CEQ regulations (40 CFR 1502.14), NMFS would take no additional regulatory action to protect spinner dolphins from human activities in the main Hawaiian Islands, thereby perpetuating the status quo. The current "take" provisions of the MMPA and its implementing regulations would be the mechanisms through which unlawful interactions with spinner dolphins would be addressed. Under the No Action alternative, the current (and increasing) frequency and intensity of human interactions with spinner dolphins would likely continue.

Alternative 2

Alternative 2 would establish a minimum distance limit, similar to minimum approach rules for humpback whales in Hawaii (50 CFR 224.103(a)) and Alaska (50 CFR 224.103(b)), and for right whales in the North Atlantic (50 CFR 224.103(c)), within which approaching spinner dolphins in the main Hawaiian Islands, by any means, would be unlawful. Such a limit would attempt to accommodate a reasonable level of dolphin viewing opportunities while minimizing potential detrimental impacts from human interactions. NMFS may consider the current Pacific Islands Regional Responsible Marine Wildlife Viewing guideline of 50 yards (45 m). NMFS may also consider exemptions for situations in which approach within the established limit is not reasonably avoidable (e.g., when human safety is at risk).

Alternative 3

Alternative 3 would regulate human behavior while in NMFS-identified spinner dolphin resting areas in the main Hawaiian Islands. This alternative would reiterate all activities currently prohibited by the MMPA and its implementing regulations, but would also prohibit other specified human activities, such as swimming with spinner dolphins. This alternative would also prohibit specified watercraft

(motor vessels, personal thrillcraft, kayaks, etc.) activities, such as placing a vessel in the predictable path of spinner dolphins in order to facilitate an encounter; as well as regulate watercraft travel (e.g., speed restrictions) within spinner dolphin resting areas.

Alternative 4

Alternative 4 would adopt a very restrictive approach by identifying all known spinner dolphin resting areas in the main Hawaiian Islands and institute a complete closure in these areas to all commercial and non-commercial activities. Exemptions within certain bays for harbors transit (ingress and egress of vessels) and emergency situations would be considered.

Public Involvement and the Scoping Process

NMFS' intent is to afford an opportunity for the public to participate in this process, including interested citizens, commercial operators, and environmental organizations; any affected low-income or minority populations; affected local state, and Federal agencies; and any other agencies with jurisdiction or special expertise concerning environmental impacts to be addressed in the EIS.

NMFS will hold public scoping meetings and accept oral and written comments on the scope of issues that should be addressed in the EIS; to determine the issues of concern with respect to practical considerations involved in applying the proposed regulations; to identify relevant environmental and socioeconomic issues to be addressed in the analysis; and to determine whether NMFS is addressing the appropriate range of alternatives. The public, as well as Federal, state, and local agencies, are encouraged to participate in this scoping process. The dates and locations of these meetings appear in this **Federal Register** notice (See **SUPPLEMENTARY INFORMATION**). The agency also invites the public to submit comments by e-mail or regular mail (See **ADDRESSES**).

Authority: Authority: 16 U.S.C. 1361 *et seq.*

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Clark, J.L. 2006. *Hawai'i Wildlife Viewing Guide*. Adventure Publications, Cambridge, Minnesota. 179 pp.

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Dated: September 26, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6-16202 Filed 9-29-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092506C]

Marine Mammals; File No. 978-1857

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Paul Nachtigall, Ph.D., Hawaii Institute of Marine Biology, University of Hawaii, P.O. Box 1106, Kailua, HI 96734, has applied in due form for a permit to conduct research on captive cetaceans.

DATES: Written, telefaxed, or e-mail comments must be received on or before November 1, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713-2289; fax (301)427-2521; and Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814-4700; phone (808)973-2935; fax (808)973-2941.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427-2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is NMFS.Pr1Comments@noaa.gov. Include in the subject line of the e-mail comment the following document identifier: File No. 978-1857.

FOR FURTHER INFORMATION CONTACT:

Amy Sloan or Dr. Tammy Adams, (301)713-2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations