



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

*National Marine Fisheries Service*

*P.O. Box 21668*

*Juneau, Alaska 99802-1668*

February 10, 2011

MEMORANDUM FOR: The Record

FROM:

*for* James W. Balsiger, Ph. D. *Robert M. Meem*  
Administrator, Alaska Region

SUBJECT:

Amendment of Incidental Take Statement in the 2010 Biological Opinion issued for the Alaska Groundfish Fisheries of the Bering sea, Aleutian Islands and Gulf of Alaska addressing the Incidental take of six marine mammal stocks listed under the Endangered Species Act

On November 24, 2010, the NMFS Alaska Region (AKR) completed a Biological Opinion (BiOp) and Incidental Take Statement (ITS) for the continued authorization of groundfish fisheries under the Fishery Management Plans for the Bering Sea, Aleutian Islands, and the Gulf of Alaska Areas, including State of Alaska parallel groundfish fisheries.

The BiOp concluded that the proposed actions (continuation of these fisheries) would result in the incidental mortality and serious injury of endangered stocks of Central North Pacific (CNP) humpback whales, Western North Pacific (WNP) stock of humpback whales, Northeast Pacific (NEP) stock of fin whales, North Pacific stock of sperm whales, and Western U.S. stock of Steller sea lions; and on the threatened Eastern U.S. stock of Steller sea lions. The BiOp also concluded that the anticipated level of this incidental taking was not likely to jeopardize these species.

A marine mammal species or population stock that is listed as threatened or endangered under the ESA is, by definition, also considered depleted under the Marine Mammal Protection Act (MMPA). The ESA allows takings of threatened and endangered marine mammals only if authorized by section 101(a)(5) of the MMPA. Before incidental take of listed marine mammals may be exempt from the taking prohibition of ESA section 9(a), incidental taking must be authorized under section 101(a)(5)(E) of the MMPA. The decision on whether authorization is proper under section 101(a)(5)(E) of the MMPA is based on the negligible impact determination (NID). At the time the aforementioned BiOp was signed, the MMPA 101(a)(5)(e) process had not been completed -- the BiOp was issued with a "placeholder" ITS, describing the level of anticipated incidental taking and outlining proposed reasonable and prudent measures and terms and conditions that would become effective on eventual issuance a final NID and publication of a permit for taking of the affected marine mammal stocks in the Federal Register.

On May 28, 2010, NMFS issued a NID that determined the incidental, but not intentional, taking of individuals of the Central North Pacific (CNP) stock of endangered humpback whales by the Hawaii-based deep-set longline fishery, by the Hawaii-based shallow-set longline fishery, and



the subject Alaskan groundfish fisheries would result in negligible impacts to this stock (75 FR 29984). On December 29, 2010, NMFS issued a final NID addressing the remaining five identified stocks in Alaska waters and published (75 FR 81972) a notice of issuance of an MMPA permit authorizing for a three-year period the incidental take by the subject Alaska fisheries of all six identified stocks. This authorization is based on determinations that mortality and serious injury of all six stocks incidental to the subject Alaska groundfish fisheries will have a negligible impact on these stocks, that recovery plans have been developed, that a monitoring program is established, and that vessels in the fisheries are registered. Take Reduction Plans (TRPs) are not required for the NEP stock of fin whales or the Eastern U.S. stock of Steller sea lions because mortality and serious injury of these stocks incidental to commercial fishing operations are at insignificant levels approaching a zero mortality and serious injury rate; TRPs for other species will be deferred as sufficient funding is not available at this time.

Section 9.1 of the BiOp identified the amount and extent of incidental take of all six stocks by the subject fisheries that were anticipated to be authorized by subject MMPA permit issuance. The required MMPA processes have been completed. I have reviewed the information developed in the BiOp and find that it is accurate and consistent with that presented in the final NIDs and in the Federal Register notice issuing the permits authorizing said incidental take. By this memorandum, I am amending the Final BiOp to adopt the Incidental Take Statement as presented in the November 24, 2010 Final NMFS BiOp. Therefore, the described amount and extent of incidental taking by the subject fisheries is authorized, subject to the reasonable and prudent measures and the non-discretionary terms and conditions outlined in the BiOp.

cc: PRD – Kaja Brix  
SFD – Melanie Brown  
Galen Tromble