DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648- XD602]

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Proposed Issuance of Permits

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

ACTION: Notice; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) is proposing to issue permits to authorize the incidental, but not intentional, take of specific Endangered Species Act (ESA)-listed marine mammal species or stocks under the Marine Mammal Protection Act (MMPA), in certain U.S. commercial fisheries.

DATES: Comments on this action and supporting documents must be received by [*INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments on the proposed permits and the preliminary determinations supporting the permits, identified by NOAA-NMFS-2024-0003, through the Federal e-Rulemaking Portal:

1. Go to *https://www.regulations.gov* and enter NOAA-NMFS-2024-0003 in the Search box.

2. Click the “Comment” icon, and complete the required fields.

3. Enter or attach your comments.

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 *https://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).

The preliminary determinations supporting the permits are available on the Internet at *https://www.regulations.gov/docket/NOAA-NMFS-2024-0003*. Other supporting information is available on the Internet including: recovery plans for the ESA-listed marine mammal species, *https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act*; 2024 MMPA List of Fisheries (LOF), *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables*; the most recent Marine Mammal Stock Assessment Reports (SAR) by region, *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region*, and stock, *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock*; and Take Reduction Teams (TRT) and Plans, *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams.*

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SUPPLEMENTARY INFORMATION:

The MMPA requires NMFS to authorize the incidental take of ESA-listed marine mammals in commercial fisheries provided it can make the following determinations: (1) the incidental mortality and serious injury (M/SI) from commercial fisheries will have a

negligible impact on the affected species or stocks; (2) a recovery plan for all affected species or stocks of threatened or endangered marine mammals has been developed or is being developed pursuant to the ESA; and (3) where required under MMPA section 118, a take reduction plan (TRP) has been developed or is being developed, a monitoring program is established, and vessels participating in the fishery are registered. We have made a preliminary determination that certain commercial fisheries meet these three requirements and propose to issue permits to these fisheries to authorize the incidental take of ESA-listed marine mammal species or stocks under the MMPA for a period of 3 years. We solicit public comments on the proposed issuance of the permits and the underlying preliminary determinations.

Background

The MMPA LOF classifies each commercial fishery as a Category I, II, or III fishery based on the level of mortality and injury of marine mammals occurring incidental to each fishery as defined in 50 CFR 229.2. Section 118(c)(2) of the MMPA requires fishing vessels that operate in Category I and II fisheries to register with NMFS and are subsequently authorized to incidentally take marine mammals during commercial fishing operations. However, that authorization is limited to those marine mammals that are not listed as threatened or endangered under the ESA. Section 118(a)(2) of the MMPA, 16 U.S.C. 1387(a)(2), also requires an additional authorization at section 101(a)(5) of the MMPA, 16 U.S.C. 1371, for incidental taking of ESA-listed marine mammals. Section 101(a)(5)(E) of the MMPA, 16 U.S.C. 1371, states that NMFS, as delegated by the Secretary of Commerce, for a period of up to 3 consecutive years shall allow the incidental, but not intentional, taking of marine mammal species or stocks designated as depleted because of their listing as an endangered species or threatened species under the ESA, 16 U.S.C. 1531 *et seq.,* by persons using vessels of the United States, while engaging in commercial fishing operations, if NMFS makes certain

determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) incidental M/SI from commercial fisheries 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 pursuant to 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 TRP has been developed or is being developed for such species or stock.

The LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. We evaluated ESA-listed stocks or species included on the final 2024 MMPA LOF (89 FR 12257, February 16, 2024) as killed or seriously injured following NMFS' Procedural Directive 02-238 "Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals." Based on this evaluation, we propose to issue permits under MMPA section 101(a)(5)(E) to vessels registered in four Category I or Category II commercial fisheries, as classified on the final 2024 MMPA LOF, to incidentally kill or seriously injure individuals from specific ESA-listed marine mammal stocks, as listed in table 1 below.

Table 1 – Proposed List of Commercial Fisheries Authorized to Take (M/SI) Specific Threatened and Endangered Marine Mammals Incidental to Fishing Operations

Commercial Fishery	LOF Category	ESA-Listed Marine Mammal Stock
HI deep-set longline/Western Pacific pelagic longline (HI deep-set component)[1]	I	False killer whale, Main HI Islands Insular
AK Bering Sea, Aleutian Islands flatfish trawl	II	Bearded seal, Beringia Humpback whale, Western North Pacific Ringed seal, Arctic Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands pollock trawl	II	Bearded seal, Beringia Humpback whale, Mexico-North Pacific Humpback whale, Western North Pacific Ringed seal, Arctic Steller sea lion, Western U.S.
AK Gulf of Alaska sablefish longline	II	Sperm whale, North Pacific Steller sea lion, Western U.S.

[1] The Western Pacific pelagic longline (HI deep-set component) is the corresponding high seas component of the HI deep-set longline fishery as defined on the MMPA List of Fisheries.

Category III fisheries are those commercial fisheries that have a remote likelihood of or no known incidental mortality or serious injury of marine mammals (MMPA section 118(c)(1)(A)(iii)). All commercial fisheries classified as Category III on the most current LOF do not require MMPA 101(a)(5)(E) authorization so long as any mortality or injury of marine mammals incidental to their operations is reported pursuant to MMPA section 118(e). Furthermore, per NMFS' Procedural Directive 02-204-02 (procedural directive), "Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E)" (NMFS 2020), NMFS considers such Category III fisheries to have a negligible impact on that marine mammal stock or species.

Thus, we incorporate by reference all Category III fisheries included in the 2024 MMPA LOF (89 FR 12257, February 16, 2024) as not subject to the ESA prohibition against incidentally taking marine mammals from endangered or threatened species, and not subject to any penalties, provided any mortalities or injures are reported as required under MMPA section 118(e).

In addition, specifically for the purposes of MMPA section 101(a)(5)(E), commercial fisheries classified as Category I or II on the LOF solely because of incidental M/SI of non-ESA-listed marine mammals meet the definition of a Category III commercial fishery with respect to ESA-listed stocks or species because the fishery has a remote likelihood of or no known incidental M/SI of ESA-listed marine mammals (NMFS 2020). In other words, if the commercial fishery is a Category I or II fishery because of incidental take of non-ESA listed marine mammals, we consider it a Category III fishery here. We have determined that the following Category I and II commercial fisheries meet this criteria:

Category I

- Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline; and

- AK Southeast salmon drift gillnet;

Category II

- AK Bristol Bay salmon drift gillnet;
- AK Kodiak salmon set gillnet;
- AK Peninsula/Aleutian Islands salmon set gillnet;
- AK Yakutat salmon set gillnet; and
- HI shallow-set longline/Western Pacific pelagic longline (HI shallow-set component).

These fisheries do not require 101(a)(5)(E) authorization and are not subject to the ESA prohibition against incidentally taking marine mammals from endangered or threatened stocks and not subject to any penalties, provided any marine mammal mortalities or injuries are reported as required under MMPA section 118(e).

NMFS regularly evaluates other commercial fisheries for purposes of making a negligible impact determination (NID) and issuing section 101(a)(5)(E) authorizations with the annual LOF as new information becomes available. More information about the fisheries in table 1 is available in the 2024 MMPA LOF (89 FR 12257, February 16, 2024) and on the Internet at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables*.

For each commercial fishery listed in table 1, we reviewed the best available scientific information to determine if the fishery met the three requirements of MMPA section 101(a)(5)(E) for issuing a permit. This information is included in the 2024 MMPA LOF (89 FR 12257, February 16, 2024), the Stock Assessment Reports (SARs) for these species (available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*), recovery plans for these species (available at: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act*), and other relevant

information, as detailed further in the documents describing the preliminary determinations supporting the permits (available at: *https://www.regulations.gov/docket/NOAA-NMFS-2024-0003*).

Basis for Determining Negligible Impact

Prior to issuing a MMPA 101(a)(5)(E) permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if the M/SI incidental to commercial fisheries will have a negligible impact on the affected marine mammal species or stocks. NMFS satisfies this requirement by making a NID. Although the MMPA does not define "negligible impact," NMFS has issued regulations providing a qualitative definition of "negligible impact," defined in 50 CFR 216.103, as 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.

Criteria for Determining Negligible Impact

NMFS uses a quantitative approach for determining negligible impact detailed in NMFS Procedural Directive 02-204-02 (directive), "Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E)," which became effective on June 17, 2020 (NMFS 2020). The procedural directive is available online at: *https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives*. The directive describes NMFS' process for determining whether incidental M/SI from commercial fisheries will have a negligible impact on ESA-listed marine mammal species/stocks (the first requirement necessary for issuing a MMPA section 101(a)(5)(E) permit as noted above).

The directive first describes the derivation of two Negligible Impact Thresholds (NIT), which represent levels of removal from a marine mammal species or stock. The first, Total Negligible Impact Threshold (NIT_t), represents the total amount of human-

caused M/SI that NMFS considers negligible for a given stock. The second, lower threshold, Single NIT (NIT_s) represents the level of M/SI from a single commercial fishery that NMFS considers negligible for a stock. NIT_s was developed in recognition that some stocks may experience non-negligible levels of total human-caused M/SI but one or more individual fisheries may contribute a very small portion of that M/SI, and the effect of an individual fishery may be considered negligible.

The directive describes a detailed process for using these NIT values to conduct a NID analysis for each fishery classified as a Category I or II fishery on the MMPA LOF. The NID process uses a two-tiered analysis. The Tier 1 analysis first compares the total human-caused M/SI for a particular stock to NIT_t. If NIT_t is not exceeded, then all commercial fisheries that kill or seriously injure the stock are determined to have a negligible impact on the particular stock. If NIT_t is exceeded, then the Tier 2 analysis compares each individual fishery's M/SI for a particular stock to NIT_s. If NIT_s is not exceeded, then the commercial fishery is determined to have a negligible impact on that particular stock. For transboundary, migratory stocks, because of the uncertainty regarding the M/SI that occurs outside of U.S. waters, we assume that total M/SI exceeds NIT_t and proceed directly to the Tier 2 NIT_s analysis. If a commercial fishery has a negligible impact across all ESA-listed stocks, then the first of three findings necessary for issuing a MMPA 101(a)(5)(E) permit to the commercial fishery has been met (*i.e.*, a NID). If a commercial fishery has a non-negligible impact on any ESA-listed stock, then NMFS cannot issue a MMPA 101(a)(5)(E) permit for the fishery to incidentally take ESA-listed marine mammals.

These NID criteria rely on the best available scientific information, including estimates of a stock's minimum population size and human-caused M/SI levels, as published in the most recent SARs and other supporting documents, as appropriate. Using these inputs, the quantitative negligible impact thresholds allow for straightforward

calculations that lead to clear negligible or non-negligible impact determinations for each commercial fishery analyzed. In rare cases, robust data may be unavailable for a straightforward calculation, and the directive provides instructions for completing alternative calculations or assessments where appropriate.

Negligible Impact Determinations

NMFS evaluated the impact of each commercial fishery (listed in table 1 above) following the directive and based on the best available scientific information, made preliminary NIDs. These NID analyses are presented in accompanying MMPA 101(a)(5)(E) evaluation documents that provide summaries of the information used to evaluate each ESA-listed stock documented on the 2024 MMPA LOF as killed or injured incidental to the fishery (available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables*). The draft MMPA 101(a)(5)(E) evaluation documents are available at: *https://www.regulations.gov/docket/NOAA-NMFS-2024-0003*.

The following stocks listed in table 1 are transboundary stocks: Western North Pacific stock of humpback whale, Mexico-North Pacific stock of humpback whale, North Pacific stock of sperm whale, Western U.S. stock of Steller sea lion, Beringia stock of bearded seal, and Arctic stock of ringed seal. As noted above, because of the uncertainty regarding M/SI that occurs outside of U.S. waters for transboundary stocks, we assumed that total M/SI exceeds NIT_t for the above transboundary stocks and proceeded directly to the Tier 2 NIT_s analysis.

The most recent SARs for several stocks listed in table 1 include fishery-related M/SI not assigned to a specific commercial fishery (information provided in NID analyses summaries where applicable below). This unattributed fishery-related M/SI could be from any number of commercial, recreational, or subsistence fisheries, including fisheries listed in table 1. Because data are not currently available to assign the

unattributed fishery-related M/SI to a specific commercial fishery, we did not include unattributed mortality in the calculations for NID Tier 2 analyses (described below). NMFS is actively monitoring the fisheries in table 1 through fishery observer programs. If additional fishery-related M/SI is documented through the observer programs that indicate additional M/SI of the stocks listed in Table 1, then NMFS will re-evaluate the appropriate NID and the permit.

Based on the criteria outlined in the directive, the most recent SAR, and the best available scientific information, NMFS has determined that the M/SI incidental to the four Category I and II fisheries listed in table 1 will have a negligible impact on the associated ESA-listed marine mammal stocks. Accordingly, this MMPA 101(a)(5)(E) requirement is satisfied for these commercial fisheries (see draft MMPA 101(a)(5)(E) determination document is available at: *https://www.regulations.gov/docket/NOAA-NMFS-2024-0003*). Summaries of the NID analyses are provided below.

HI Deep-Set Longline/Western Pacific Pelagic Longline (HI deep-set component) Fishery

The Category I HI deep-set longline/Western Pacific pelagic longline (HI deep-set component) fishery has documented incidental M/SI of the main HI Islands (MHI) insular stock of false killer whale in the 2023 draft SAR (Carretta *et al*. In press). The total annual average human caused M/SI for this stock (0.03) does not exceed NIT_t (0.258); thus, the Tier 1 analysis is satisfied and all commercial fisheries are considered to have a negligible impact on this stock (see accompanying MMPA 101(a)(5)(E) evaluation document linked above for NIT calculation).

AK Bering Sea, Aleutian Islands Flatfish Trawl Fishery

The Category II AK Bering Sea, Aleutian Islands flatfish trawl fishery has documented incidental M/SI of the Western U.S. stock of Steller sea lion in the 2023 draft SAR (Young *et al*. In press). The 2023 SAR includes mean annual total commercial

fishery-related M/SI (39) for the Western U.S. stock of Steller sea lion. This comprises M/SI from all commercial fisheries, including the AK Bering Sea, Aleutian Islands flatfish trawl fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery. The SAR also includes unattributed fishery-related M/SI (1.9) for the stock, which is not assigned to a specific commercial fishery.

The estimated M/SI of Steller sea lions (Western U.S. stock) in the AK Bering Sea, Aleutian Islands flatfish trawl fishery is 13, based on observer data. Since this M/SI (13) is less than NIT_s (38.87), NMFS determined that the AK Bering Sea, Aleutian Islands flatfish trawl fishery has a negligible impact on the Western U.S. stock of Steller sea lion (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Bering Sea, Aleutian Islands flatfish trawl fishery has documented M/SI of the Western North Pacific stock of humpback whale in the 2022 final SAR (Young *et al*. 2023). The 2022 SAR includes mean annual total commercial fishery-related M/SI (0.012) for the Western North Pacific stock of humpback whale. This comprises M/SI from all commercial fisheries, including the AK Bering Sea, Aleutian Islands flatfish trawl fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery. The SAR also includes unattributed fishery-related M/SI (0.001) for the stock, which is not assigned to a specific commercial fishery. This unattributed fishery-related M/SI could be from any number of commercial, recreational, or subsistence fisheries, including the AK Bering Sea, Aleutian Islands flatfish trawl fishery.

The estimated M/SI of humpback whales (Western North Pacific stock) in the AK Bering Sea, Aleutian Islands flatfish trawl fishery is 0, based on observer data. Since this M/SI (0) is less than NIT_s (0.439), NMFS determined that the AK Bering Sea, Aleutian Islands flatfish trawl fishery has a negligible impact on the Western North Pacific stock of humpback whale (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Bering Sea, Aleutian Islands flatfish trawl fishery has documented incidental M/SI of the Beringia stock of bearded seal in the 2020 final SAR (Muto *et al*. 2021). The mean annual total commercial fishery-related M/SI of the Beringia stock of bearded seal is 1.8, and all attributed to trawl fisheries. The estimated M/SI of bearded seals (Beringia stock) in the AK Bering Sea, Aleutian Islands flatfish trawl fishery is 1.2, based on observer data. Since this M/SI (1.2) is less than NIT_s (213.5), NMFS determined that the AK Bering Sea, Aleutian Islands flatfish trawl fishery has a negligible impact on the Beringia stock of bearded seal (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Bering Sea, Aleutian Islands flatfish trawl fishery has documented incidental M/SI of the Arctic stock of ringed seal in the 2020 final SAR (Muto *et al*. 2021). The mean annual total commercial fishery-related M/SI of the Arctic stock of ringed seal is 4.8, and all attributed to trawl fisheries. The estimated M/SI of ringed seals (Arctic stock) in the AK Bering Sea, Aleutian Islands flatfish trawl fishery is 4.6, based on observer data. Since this M/SI (4.6) is less than NIT_s (123.6), NMFS determined that the AK Bering Sea, Aleutian Islands flatfish trawl fishery has a negligible impact on the Arctic stock of ringed seal (see accompanying MMPA 101(a)(5)(E) evaluation document).

AK Bering Sea, Aleutian Islands Pollock Trawl Fishery

The Category II AK Bering Sea, Aleutian Islands pollock trawl fishery has documented incidental M/SI of the Western U.S. stock of Steller sea lion in the 2023 draft SAR (Young *et al*. In press). The 2023 SAR includes mean annual total commercial fishery-related M/SI (39) for the Western U.S. stock of Steller sea lion. This comprises M/SI from all commercial fisheries, including the AK Bering Sea, Aleutian Islands flatfish trawl fishery, as well as fishery-related M/SI for the stock not assigned to a

specific commercial fishery. The SAR also includes unattributed fishery-related M/SI (1.9) for the stock, which is not assigned to a specific commercial fishery.

The estimated M/SI of Steller sea lions (Western U.S. stock) in the AK Bering Sea, Aleutian Islands pollock trawl fishery is 6.8, based on observer data. Since this M/SI (6.8) is less than NIT_s (38.87), NMFS determined that the AK Bering Sea, Aleutian Islands pollock trawl fishery has a negligible impact on the Western U.S. stock of Steller sea lion (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Bering Sea, Aleutian Islands pollock trawl fishery has documented incidental M/SI of the Arctic stock of ringed seal in the 2020 final SAR (Muto *et al*. 2021). The estimated M/SI of ringed seals (Arctic stock) in the AK Bering Sea, Aleutian Islands pollock trawl fishery is 0.2, based on observer data. Since this M/SI (0.2) is less than NIT_s (123.6), NMFS determined that the AK Bering Sea, Aleutian Islands pollock trawl fishery has a negligible impact on the Arctic stock of ringed seal (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Bering Sea, Aleutian Islands pollock trawl fishery has documented M/SI of the Western North Pacific stock of humpback whale in the 2022 final SAR (Young *et al*. 2023). The 2022 SAR includes mean annual total commercial fishery-related M/SI (0.012) for the Western North Pacific stock of humpback whale. This comprises M/SI from all commercial fisheries, including the AK Bering Sea, Aleutian Islands pollock trawl fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery. The SAR also includes unattributed fishery-related M/SI (0.001) for the stock, which is not assigned to a specific commercial fishery.

The estimated M/SI of humpback whales (Western North Pacific stock) in the AK Bering Sea, Aleutian Islands pollock trawl fishery is 0.008, based on observer data. Since this M/SI (0.008) is less than NIT_s (0.439), NMFS determined that the AK Bering Sea, Aleutian Islands pollock trawl fishery has a negligible impact on the Western North

Pacific stock of humpback whale (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Bering Sea, Aleutian Islands pollock trawl fishery has documented M/SI of the Mexico-North Pacific stock of humpback whale in the 2022 final SAR (Young *et al*. 2023). The 2022 SAR includes mean annual total commercial fishery-related M/SI (0.36) for the Mexico-North Pacific stock of humpback whale. This comprises M/SI from all commercial fisheries, including the AK Bering Sea, Aleutian Islands pollock trawl fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery. The SAR also includes unattributed fishery-related M/SI (0.05) for the stock, which is not assigned to a specific commercial fishery.

The estimated M/SI of humpback whales (Mexico-North Pacific stock) in the AK Bering Sea, Aleutian Islands pollock trawl fishery is 0.03, based on observer data. As described in the 2022 final SAR, the minimum population estimate (N_{min}) for this stock is considered unknown (Young *et al*. 2023), and therefore NIT_s cannot be calculated directly. Using the process outlined in the directive (NMFS 2020), a threshold N_{min} for NIT_s was calculated. The threshold N_{min} for NIT_s is 69.93. Since it is likely that the minimum population for the Mexico-North Pacific stock of humpback whale exceeds the threshold N_{min}, NMFS has determined that the AK Bering Sea, Aleutian Islands pollock trawl fishery has a negligible impact on the Mexico-North Pacific stock of humpback whale (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Bering Sea, Aleutian Islands pollock trawl fishery has documented incidental M/SI of the Beringia stock of bearded seal in the 2020 final SAR (Muto *et al*. 2021). The estimated M/SI of bearded seal (Beringia stock) in the AK Bering Sea, Aleutian Islands pollock trawl fishery is 0.6, based on observer data. Since this M/SI (0.6) is less than NIT_s (213.5), NMFS determined that the AK Bering Sea, Aleutian

Islands pollock trawl fishery has a negligible impact on the Beringia stock of bearded seal (see accompanying MMPA 101(a)(5)(E) evaluation document).

AK Gulf of Alaska Sablefish Longline Fishery

The Category II AK Gulf of Alaska sablefish longline fishery has documented M/SI of North Pacific stock of sperm whale in the 2020 final SAR (Muto *et al*. 2021). The estimated M/SI of sperm whales (North Pacific stock) in the AK Gulf of Alaska sablefish longline fishery is 1.1, based on observer data.

As noted in the SAR, current and historical abundance estimates of sperm whales in the North Pacific are based on limited data and are considered unreliable; caution should be exercised in interpreting published estimates. Further, sperm whales are far-ranging and exhibit sex segregation and stock overlap that together make population size estimation difficult (Muto *et al*. 2021). More specifically, females and juveniles are unlikely to occur in this area, so the abundance estimate includes only males. As described in the 2020 final SAR, a N_{min} can be calculated for this stock using the population estimate of 345 (coefficient of variation (CV) = 0.43) from surveys in the Gulf of Alaska in 2015, the N_{min} is then derived from the estimate and CV and results in a N_{min} of 244 sperm whales. However, this N_{min} (244) is an underestimate for the entire stock because it is based on surveys of a small portion of the stock's extensive range and it does not account for animals missed on the trackline or for females and juveniles in tropical and subtropical waters (Muto *et al*. 2021). Therefore, using the process outlined in the directive (NMFS 2020), we calculated a threshold N_{min} for NIT_s which is 4,230.8. Genetic evidence suggests that the males sampled in the sub-Artic come from multiple populations at lower latitudes including the West Coast (N_{min} = 1,270) and Hawai'i (N_{min} = 4,486) stocks as well as the Eastern Tropical Pacific sperm and thus do not represent the males from a single population (Mesnick *et al*. 2011). Given the uncertainty of the stock assessment and the underestimated abundance, NMFS has determined that it is

likely that the abundance is greater than the threshold N_{min} and that the AK Gulf of Alaska sablefish longline fishery has a negligible impact on the North Pacific stock of sperm whale (see accompanying MMPA 101(a)(5)(E) evaluation document).

The Category II AK Gulf of Alaska sablefish longline fishery has documented incidental M/SI of the Western U.S. stock of Steller sea lion in the 2023 draft SAR (Young *et al*. In press). The 2023 SAR includes mean annual total commercial fishery-related M/SI (39) for the Western U.S. stock of Steller sea lion. This comprises M/SI from all commercial fisheries, including the AK Gulf of Alaska sablefish longline fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery. The SAR also includes unattributed fishery-related M/SI (1.9) for the stock, which is not assigned to a specific commercial fishery.

The estimated M/SI of Steller sea lions (Western U.S. stock) in the AK Gulf of Alaska sablefish longline fishery is 1.9, based on observer data. Since this M/SI (1.9) is less than NIT_s (38.87), NMFS determined that the AK Gulf of Alaska sablefish longline fishery has a negligible impact on the Western U.S. stock of Steller sea lion (see accompanying MMPA 101(a)(5)(E) evaluation document).

Recovery Plans

Recovery plans for Steller sea lions, sperm whales, and false killer whales (MHI insular) have been completed (see *https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act*).

A new recovery plan for humpback whales is being developed. In 2016, NMFS revised the listing status of the humpback whale under the ESA. The globally listed endangered species was divided into 14 distinct population segments (DPSs), the species-level listing was removed, and NMFS listed four DPSs as endangered and one DPS as threatened (81 FR 62260, September 8, 2016). In June 2022, NMFS published a recovery outline for the Central America, Mexico, and Western North Pacific DPSs of humpback

whales (*https://www.fisheries.noaa.gov/resource/document/recovery-outline-central-america-mexico-and-western-north-pacific-distinct*). The recovery outline serves as an interim guidance document and, with the existing species-wide recovery plan, directs recovery efforts, including recovery planning, for the Central America, Mexico, and Western North Pacific DPSs of humpback whales. Once finalized, the new recovery plan will replace the species-wide recovery plan that was published in 1991.

Recovery plans for bearded and ringed seals are also being developed.

Accordingly, the requirement that a recovery plan has been developed or is being developed pursuant to the ESA is satisfied.

Take Reduction Plans

The MMPA section 118 requires the development and implementation of a TRP for each strategic stock that interacts with a Category I or II fishery. Subject to available funding, the Secretary shall give highest priority to the development of TRPs for species or stocks whose M/SI exceeds potential biological removal (PBR) level, have a small population size, and which are declining most rapidly. The stocks considered for these permits are designated as strategic stocks under the MMPA because the stocks or a component of the stocks are listed as threatened species or endangered species under the ESA (MMPA section 3(19)(C)).

The MMPA establishes short- and long-term goals of a TRP. The short-term goal of a TRP is to reduce M/SI of marine mammals incidentally taken in commercial fisheries to levels below the PBR for stocks. The long-term goal is to reduce M/SI of marine mammals incidentally taken in commercial fisheries to levels below the insignificant threshold, defined by NMFS as 10 percent of a stock's PBR level (50 CFR 229.2). 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 when funding is insufficient. NMFS has insufficient funding available

to simultaneously develop and implement TRPs for all strategic stocks that interact with Category I or Category II fisheries. As provided in MMPA section 118(f)(6)(A) and (f)(7), NMFS uses the SAR and LOF as the basis to determine its priorities for establishing TRT and developing TRPs. Information about NMFS' marine mammal TRTs and TRPs may be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams*.

The HI deep-set longline fishery, for the affected marine mammal species or stocks (table 1), has a TRP in place.

Both the AK Bering Sea, Aleutian Islands flatfish trawl and AK Bering Sea, Aleutian Islands pollock trawl fisheries, for the affected marine mammals species or stocks (table 1) have met the long-term goals of a TRP (*i.e.*, M/SI of marine mammals incidentally taken in to these fisheries is below the insignificant threshold, which is 10 percent of a stock's PBR level).

PBR and incidental M/SI for each stock listed in table 1 in the AK Bering Sea, Aleutian Islands flatfish trawl fishery are as follows:

- Bearded seal, Beringia - PBR = 8,210, M/SI = 1.2, M/SI as percent of the stock's PBR = 0.01 percent;
- Humpback whale, Western North Pacific - PBR = 0.2, M/SI = 0, M/SI as percent of stock's PBR = 0 percent;
- Ringed seal, Arctic - PBR = 4,755, M/SI = 4.6, M/SI as percent of the stock's PBR = 0.097 percent; and
- Steller sea lion, Western U.S - PBR = 299, M/SI = 13, M/S as percent of the stock's PBR = 4.3 percent.

PBR and incidental M/SI for each stock listed in table 1 in the AK Bering Sea, Aleutian Islands pollock trawl fishery are as follows:

- Bearded seal, Beringia - PBR = 8,210, M/SI = 0.6, M/SI as percent of the stock's PBR = 0.007 percent;
- Humpback whale, Mexico-North Pacific - PBR is undetermined, M/SI = 0.03;[1]
- Humpback whale, Western North Pacific - PBR = 0.2, M/SI = 0.008, M/SI as percent of stock's PBR = 4 percent;
- Ringed seal, Arctic - PBR = 4,755, M/SI = 0.2, M/SI as percent of the stock's PBR = 0.004 percent; and
- Steller sea lion, Western U.S - PBR = 299, M/SI = 6.8, M/SI as percent of the stock's PBR = 2.2 percent.

Marine mammal M/SI incidental to each commercial fishery (AK Bering Sea, Aleutian Islands flatfish trawl, and AK Bering Sea, Aleutian Islands pollock trawl) is below 10 percent of each stock's PBR; thus it is already below the insignificance threshold and approaching a zero M/SI rate. MMPA Section 118(b) requires fisheries to reduce incidental M/SI to insignificant levels and states that fisheries that maintain insignificant M/SI levels shall not be required to further reduce those rates. Therefore, the AK Bering Sea, Aleutian Islands flatfish trawl and AK Bering Sea, Aleutian Islands pollock trawl fisheries cannot be required to further reduce M/SI rates associated with marine mammal species or stocks. As a result, further take reduction planning is not appropriate at this time.

As noted above and in the SAR, the N_{min} (244) for the North Pacific stock of sperm whales "is an underestimate for the entire stock because it is based on surveys of a small portion of the stock's extensive range and it does not account for animals missed on

[1] N_{min} for the Mexico-North Pacific stock of humpback whale in the winter and summer areas is 2,241 and 766, respectively. Both of these estimates of abundance are based on data collected more than 15 years ago. As stated in the 2022 SAR, because N_{min} is considered unknown, PBR is undetermined. Based on the dated N_{min} for this population, that NMFS believes the population to be either stable or increasing, and the incidental M/SI of 0.03 in the AK Bering Sea, Aleutian Islands pollock trawl fishery, NMFS estimates the M/SI is below 10 percent of the stock's PBR.

the trackline or for females and juveniles in tropical and subtropical waters" (Muto *et al*. 2021). Based on NMFS' priorities, implementation of a TRP for the AK Gulf of Alaska sablefish longline fishery is under development but currently deferred under MMPA section 118 (f)(3) as other stocks/fisheries are a higher priority for any available funding. Likewise, even if NMFS was required to engage in further take reduction planning for the AK Bering Sea, Aleutian Islands flatfish trawl and AK Bering Sea, Aleutian Islands pollock trawl fisheries, further development of a TRP for those fisheries would also deferred under MMPA section 118 (f)(3) as other stocks/fisheries are a higher priority for any available funding.

All of the evaluated fisheries listed in table 1, for the affected marine mammal species or stocks, have a TRP in place, achieved the long-term goal of MMPA section 118(f), or based on NMFS' priorities, implementation of a TRP is currently deferred under section 118 as other stocks/fisheries are a higher priority for any available funding for establishing new TRPs. Accordingly, the requirement under MMPA section 118 to have TRPs in place or in development is satisfied (see preliminary determinations supporting the permits available on the Internet at *https://www.regulations.gov/docket/NOAA-NMFS-2024-0003*).

Monitoring Program

Under MMPA section 118(d), NMFS is to establish a program for monitoring incidental M/SI of marine mammals from commercial fishing operations. Each of the fisheries listed in table 1 is monitored by NMFS fishery observer programs. Accordingly, the requirement under MMPA section 118 to have a monitoring program in place 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. NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program, with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Therefore, the requirement for vessel registration is satisfied.

Conclusions for Proposed Permits

Based on the above evaluation for each commercial fishery listed in table 1 as it relates to the three requirements of MMPA section 101(a)(5)(E), we propose to issue MMPA 101(a)(5)(E) permits to the commercial fisheries in table 1 to authorize the incidental take of ESA-listed species or stocks during commercial fishing operations. If, during the 3-year authorization, there is a significant change in the information or conditions used to support any of these determinations, NMFS will re-evaluate whether to amend or modify the authorization, after notice and opportunity for public comment. If the authorization for an individual fishery in table 1 becomes amended, modified, or invalidated for any reason during the 3-year period, the authorizations for the other commercial fisheries in table 1 will continue unchanged and effective until the end of the 3-year period. NMFS solicits public comments on the proposed permits and the preliminary determinations supporting the permits.

ESA Section 7 and National Environmental Policy Act Requirements

ESA section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of any species listed under the ESA, or destroy or adversely modify designated critical habitat of any ESA-listed species. The effects of these commercial fisheries on ESA-listed marine mammals for which permits are proposed here, were analyzed in the appropriate ESA section 7 Biological Opinions on the commercial fishery, and incidental take was exempted for those ESA-listed marine mammals for each of these fisheries in accordance with the Biological Opinions' incidental take statement. Under section 7 of the ESA,

Biological Opinions quantify the effects of the proposed action on ESA-listed species and their critical habitat and, where appropriate, exempt take of ESA-listed species that is reasonably certain to occur, as specified in the incidental take statement.

Under MMPA section 101(a)(5)(E), NMFS analyzes previously documented M/SI incidental to commercial fisheries through the NID process, and when the necessary findings can be made, issues a MMPA section 101(a)(5)(E) permit that allows for an unspecified amount of incidental taking of specific ESA-listed marine mammal stocks while engaging in commercial fishing operations. Thus, the applicable standards and resulting analyses under the MMPA and ESA differ, and as such, do not always align.

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. Because the proposed permits would not modify any fishery operation and the effects of the fishery operations have been evaluated in accordance with NEPA, no additional NEPA analysis beyond that conducted for the associated Fishery Management Plans is required for these permits. Issuing the proposed permits would have no additional impact on the human environment or effects on threatened or endangered species beyond those analyzed in these documents.

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