

SUMMARY: On October 17, 1996, the Director of the Massachusetts Division of Marine Fisheries submitted to NMFS an application for a general incidental take permit under the Endangered Species Act (ESA) for northern right whales incidental to commercial fishing activities within Massachusetts' territorial waters and a small take authorization for the same species and activity under the Marine Mammal Protection Act (MMPA). For the reasons discussed in this document, that application has been denied.

ADDRESSES: Copies of the application, letter, and/or Federal Register notices mentioned in this document may be obtained by writing to Michael Payne, Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-2337, or by telephoning one of the contacts listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT:

Kenneth R. Hollingshead or Victoria Cornish, NMFS (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1996 (61 FR 64500), NMFS noted that the Commonwealth of Massachusetts (Massachusetts) had submitted an application under the MMPA for a small take of northern right whales (*Eubalaena glacialis*) incidental to commercial fishing activities within Massachusetts, territorial waters, in particular Cape Cod Bay, during the months of February through May. This application was in response to an order dated September 24, 1996, in *Strahan v. Linnon* wherein the presiding District Court judge ordering Massachusetts to apply, under the MMPA, for a small take of northern right whales. In its letter, Massachusetts also requested a general incidental take permit for the northern right whale under either section 7(b)(4) or section 10(a)(1)(b) of the ESA. NMFS stated in that Federal Register notice that while the Agency does not consider the application to be complete in either its discussion of the interaction, or planned mitigation, and while it does not plan to begin processing the application until it is complete and Massachusetts has submitted its Take Reduction Plan (TRP) for northern right whales, NMFS was offering the public an advance opportunity to review and comment on the application and the issues. However, no comments were received during the 30-day comment period.

Issues

For a discussion of the issues, please refer to the notice of receipt of the application (61 FR 64500, December 5, 1996).

Determination

On January 28, 1997, in a letter to Massachusetts, NMFS determined that it was not appropriate to consider authorizing the State's potential incidental take of right whales by commercial fishing through a permit application process. NMFS may issue authorizations for the incidental taking of endangered and threatened species under section 101(a)(5)(E) of the MMPA upon its own initiative to fishers operating in commercial fisheries if negligible impact findings can be made. NMFS may reevaluate determinations under this provision if there is a significant change in the information used in making the original determinations. NMFS also reevaluates its negligible impact determinations after 3 years, as required by statute.

In making negligible impact determinations, NMFS considers the serious injury and mortality from all commercial fishery operations. On August 31, 1995 (60 FR 45399), NMFS stated that it was unable to make a negligible impact determination with respect to impacts of commercial fisheries on right whales. Although Massachusetts has developed a TRP since the August 1995 notice was issued, NMFS has concluded that no significant new information has been submitted to cause the Agency to reconsider this determination. Since NMFS cannot make a negligible impact determination, an incidental take authorization under section 101(a)(5)(E) is not appropriate.

In regard to Massachusetts' application for an incidental take permit under section 7(b)(4) of the ESA, NMFS does not consider it appropriate for a state or private party to apply for an Incidental Take Statement under section 7(b)(4) of the ESA as this section applies only to Federal actions. Issuance of a section 101(a)(5)(E) permit is considered a Federal action, however, and would be subject to consultation. If appropriate, a section 7 Incidental Take Statement would be issued in association with this consultation. Therefore, an incidental take permit under section 10 is determined to be unnecessary. While NMFS has determined that the Massachusetts application for an incidental take under section 7 or 10 is inappropriate, NMFS has encouraged Massachusetts to provide information regarding state fishing activities that

would be useful in conducting appropriate consultations.

Accordingly, for the reasons stated above, on January 28, 1997, NMFS informed Massachusetts that it was inappropriate to proceed, as requested by Massachusetts, to process MMPA and ESA applications.

Dated: January 30, 1997.

Patricia A. Montanio,
Acting Director, Office of Protected Resources,
National Marine Fisheries Service.

[FR Doc. 97-2794 Filed 2-4-97; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 10, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-2987 Filed 2-3-97; 2:08 pm]

BILLING CODE 6351-01-M

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 3, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-2988 Filed 2-3-97; 2:08 pm]

BILLING CODE 6351-01-M

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, February 24, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-2989 Filed 2-3-97; 2:08 pm]

BILLING CODE 6351-01-M

Sunshine Act; Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, February 19, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Fl. Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:
Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-2990 Filed 2-3-97; 2:08 pm]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Military Health Care Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: On January 28, 1997 (62 FR 4036), the Department of Defense published a notice announcing a meeting of the Military Health Care Advisory Committee. This meeting has been POSTPONED until mid-March, due to scheduling conflicts which have not permitted full attendance by Committee members. All other information remains unchanged.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Christopherson, Senior Advisor, or Commander Sidney Rodgers, Special Assistant to PDASD, Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301-1200; telephone (703) 697-2111.

Dated: January 29, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-2751 Filed 2-4-97; 8:45 am]

BILLING CODE 5000-04-M

Defense Advisory Committee on Military Personnel Testing

ACTION: Notice.

Pursuant to Public Law 92-463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on March 10, 1997 and from 8:30 a.m. to 4:30 p.m. on March 11, 1997. The meeting will be held at The Sea Turtle Inn, One Ocean Boulevard, Atlantic Beach, Florida 32233. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests and renorming of the tests. Persons desiring to make oral presentations or submit written statement for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301-4000, telephone (703) 697-9271, no later than February 21, 1997.

Dated: January 30, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97-2750 Filed 2-4-97; 8:45 am]

BILLING CODE 5000-04-M

Organizations, Functions, and Authority Delegations

AGENCY: Department of Defense, Defense Office of Hearings and Appeals.

ACTION: Notice.

SUMMARY: The General Accounting Office Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to waive debts arising out of the erroneous payment of pay and allowances. The OMB Director subsequently delegated the authorities listed below to the Department of Defense (DOD). The Secretary of Defense further delegated this authority to the Defense Office of Hearings and Appeals (DOHA). This notice announces DOHA's intent to issue regulations implementing this new authority in the near future and that, in

the meantime, DOHA will use the procedures and practices applicable to the waiver of debts before the effective date of the transfer of authority, December 18, 1996, which are published in title 4, Code of Federal Regulations, Chapter 1, Subchapter G. **EFFECTIVE DATE:** February 5, 1997.

ADDRESSES: Comments may be mailed to the Defense Legal Services Agency, Defense Office of Hearings and Appeals, Chairman, Claims Appeals Board, P.O. Box 3656, Arlington, VA 22303.

FOR FURTHER INFORMATION CONTACT: Michael Hipple, Chairman, Claims Appeals Board, 703-696-8524, ext. 150.

SUPPLEMENTARY INFORMATION: Pursuant to the General Accounting Office Act of 1996, some functions of the Comptroller General were transferred to the Director of OMB. See Sec. 101, Pub. L. 104-316, 110 Stat. 3826. Subsequently, in a determination order dated December 17, 1996, the Director delegated authority to approve the waiver of debts arising from the erroneous payment of pay and allowances to various components within the Executive branch. This order delegated to the Department of Defense the authority to:

- a. Waive erroneous payments of Department of Defense civilian employees described at section 103(d);
- b. Waive recovery of erroneous overpayments described at section 105(b);
- c. Waive recovery of erroneous overpayments described at section 116; Before the effective date of the transfer, these claims were subject to the procedures prescribed by the Comptroller General at 4 CFR Chapter 1, Subchapter G (1996). Until DOHA issues its own regulations implementing its new claims authority, DOHA's policy will be to apply these procedures and the U.S. General Accounting Office's practices to claims submitted to DOHA for settlement. As an exception, the authority to issue decisions in review of settlements will be exercised by a Claims Appeals Board on behalf of the Secretary of Defense.

For each application for waiver of a debt exceeding \$1,500, or for an appeal of an Agency's decision on a waiver under that amount, the claimant should submit the application to the agency out of whose activity the claim arose, and it is the agency's responsibility to forward the claim to DOHA with its comments. Claimants may submit their applications directly to DOHA. However, claimants are advised that submitting their applications directly to DOHA may delay consideration of their applications because DOHA will not settle a claim without first notifying the agency of the