48 CFR Parts 216, 217, and 243

Federal Acquisition Regulation Supplement; Undefinitized Contract Actions (UCAs); Correction

AGENCY: Department of Defense (DoD).

ACTION: Interim rule; correction.

SUMMARY: This document corrects an interim rule on Undefinitized Contract Actions (UCAs) which was published in the **Federal Register** on Thursday, April 16, 1987 (52 FR 12387). The Action is necessary to correct language in the paragraph entitled "**EFFECTIVE DATE**". The Effective Date paragraph reads as follows:

EFFECTIVE DATE: April 16, 1987. (Effective on all undefinitized contract actions (UCAs) except for Foreign Military Sales; purchases of less than $25,000; special access programs; and congressionally-mandated long-lead procurement contracts.)

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 87-12151 Filed 5-27-87; 8:45 am]

BILLING CODE 3010-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Dockets No. 1-18, Notice 32; No. 70-27, Notice 31]

Federal Motor Vehicle Safety Standards; Hydraulic Brake Systems; Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Federal Motor Vehicle Safety Standards No. 105, *Hydraulic Brake Systems*, and No. 101, *Controls and Displays*, have required telltales whose single function is indicating failure in the antilock portion of a brake system to read "ANTILOCK." This notice amends those standards to permit "ABS," an abbreviation for "Antilock Brake System," as an alternative.

DATES: The amendments made by this rule are effective June 29, 1987. Petitions for reconsideration must be received by June 29, 1987.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-5271).

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*, requires an indicator lamp, i.e., a telltale on the dashboard, to be activated whenever there is a total functional electrical failure in a antilock brake system. The manufacturer may meet this requirement by using a common indicator displaying the word "BRAKE," which also warns the driver about other types of brake failure. Alternatively, the manufacturer may provide a separate indicator for antilock failure.

If the manufacturer uses a separate indicator for antilock failure, Standard No. 105 and Standard No. 101, *Controls and Displays*, have specified that the indicator must read "ANTILOC" or "ANTI-LOCK." On April 16, 1986, NHTSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (51 FR 12900) to permit "ABS," an abbreviation for "Antilock Brake System," as an alternative.

As discussed in the NPRM, this rulemaking action resulted from a petition for rulemaking submitted by Mercedes-Benz. That company stated that the letters "ABS" have been used in automotive press articles and in manufacturers" print advertising, with few exceptions, for identifying brake systems with antilock capabilities. Copies of such publications were submitted with the petition. The petitioner contended that as antilock brake systems increase in availability, the abbreviation will be increasingly used by the media, in technical publications, and in owners' manuals, and is expected to remain synonymous with this type of brake system.

Mercedes also argued that if a manufacturer offers a system or feature not required by regulation, but provides a corresponding telltale required by regulation, that telltale message should be permitted to correspond with the campaigns developed to promote such safety systems. That company compared the use of "ABS" in its marketing of antilock braking systems to the use of "SRS" in marketing its Supplementary Restraint System.

In the NPRM, NHTSA stated that it believed that the primary issue it must consider in responding to Mercedes' petition is the recognizability and understanding of "ABS" as compared to "ANTILOCK," both by new car buyers and other drivers. For example, in deciding not to adopt the International Standards Organization (ISO) brake symbol as an alternative to the word "BRAKE" in common indicators, the agency noted a Society of Automotive Engineers (SAE) study indicating extremely low percentage recognition for the ISO brake symbol compared to the word "BRAKE," and the importance for safety of drivers understanding the meaning of the brake indicator lamp. See 50 FR 23430 (June 4, 1985).

NHTSA indicated in the NPRM that it was unaware of data concerning the recognizability and understanding of "ANTILOCK" or "ABS." The agency recognized that, unlike some identifying words and abbreviations, the abbreviation ABS appears to require learning by the driver in order to understand its meaning. However, given the use of ABS by the media and in marketing campaigns, the agency agreed with the petitioner that such learning is likely to be taking place and to continue to do so. The agency also noted that the word "ANTILOCK" requires learning by the driver in order to understand its meaning, since antilock technology is relatively new and unfamiliar to most drivers. NHTSA specifically requested comments and data on the recognizability and understanding of "ANTILOCK" and "ABS."

NHTSA received nine comments on the NPRM, some of which favored the proposal and some of which opposed it. Commenters supporting the proposal include Chrysler, Ford, Volkswagen, BMW, American Motors (AMC) and Volvo. Chrysler stated that with the expected increase in usage of antilock brake systems and accompanying owner information and advertising campaigns, both "ANTILOCK" and "ABS" should be recognizable and understandable to drivers of those cars. Ford stated that it supports the proposal since (1) it represents more efficient use of space in labeling a small telltale, (2) that company has used the term "ABS" to designate its antilock brake systems, (3) the "ABS" designation has been recoginzed by the International Standards Organization (ISO) as part of one of its proposals for an antilock brake symbol, and (4) that company probably would employ the "ABS" identification in its products worldwide if it is permitted by NHTSA for use in the United States. That company cited data suggesting that "ABS" currently has lower recognition than "ANTILOCK," but pointed out that an abstract symbol, such as "ABS," can be learned just like a word in another language or a new slang word. BMW asserted that since both antilock braking systems and separate telltales for them are voluntarily provided, manufacturers should be provided maximum flexibility in telltale identification. That company stated that both messages are equally unknown to the driving public and that neither is self-explanatory. BMW also noted that, unlike the other required brake telltales, complete loss of this function does not interfere with normal braking. That commenter stated that this is reflected by Standard No. 101's traditional designation of the color yellow for this telltale, in contrast to red for the others, indicating less urgency. AMC acknowledged that the introduction of "ABS" would necessitate some education of drivers, but asserted that it is opportune that this be done now, as the new antilock technology is gradually being integrated into vehicle designs. Volkswagen noted that while the provision of multiple brake indicator lights can add significantly to the amount of information provided to the driver, the amount of information which can be printed on a telltale is usually quite limited. That company supported use of "ABS," arguing that inflexibility with regard to the abbreviated message to be displayed is not reasonable.

Commenters opposing the proposal include Honda, Renault, and a private individual, Mr. Robert F. Schlegel, Jr. Honda stated that other abbreviations for Antilock Brake System are in use by other manufacturers, including "ALB" (Anit-Lock Brake), "ASBS" (Anti-skid Brake System), "ESC" (Electronic Skid Control), and "SCS" (Stop-Control System). That commenter stated that these various abbreviations, including "ABS," are trademarks, and expressed concern that the wide use of "ABS" with the Bosch anti-lock brake system may lead consumers to believe that any vehicle with a telltale showing the letters "ABS" is equipped with a Bosch system. Based on this concern, Honda argued that it is neither wise nor lawful for NHTSA to permit such use. Renault similarly commented that the abbreviation "ABS" is commonly associated with a particular anti-skid device, or with a particular manufacturer. That company stated that there is no reason to assign a greater value to this abbreviation than to other ones which may appear. Renault stated that the French manufacturers have proposed a pictorial symbol for antilock failure to the ISO, which is also currently considering two other symbols. Since the ISO has not yet ruled on an international symbol for antilock failure, that commenter requested that Standards No. 101 and No. 105 not be amended at this time. Renault also argued that if "ABS" is permitted, other symbols, particularly those before the ISO, should also be permitted. Mr. Schlegel argued that the word "ANTILOCK" conveys more information than "ABS" to the vast majority of drivers, contending that symbols must provide a pictorial or verbal clue. According to that commenter, there are too many acronyms arriving lately, which are not understood by the general public.

After careful consideration of the comments, NHTSA has decided to permit the use of "ABS" as an alternative to "ANTILOCK." The use of multiple brake indicators can provide additional safety information to the driver, and the agency believes that greater flexibility is appropriate. The message "ABS" is considerably shorter than "ANTILOCK" and is therefore more easily incorporated into a small telltale.

NHTSA recognizes that "ABS" will require learning on the part of drivers. For example, in an informal survey of 40 Ford engineering employees, 15 percent associated "ABS" with antilock brakes, while 72 percent recognized the word "ANTILOCK." As indicated in information provided by Mercedes-Benz and BMW, however, the term "ABS" is being used in both press articles and advertising. NHTSA believes that drivers are learning the meaning of "ABS," and that such learning will continue. NHTSA notes that there are differences between this situation and that involved in the agency's decision not to permit use of the ISO brake symbol. First, the telltale for antilock failure is not as urgent or critical a warning as that for other types of brake failure. Second, there is extensive use of the term "ABS" in press articles and advertising, which is not the case for the ISO brake symbol. Third, as antilock technology is still in the early stages of being introduced to drivers, there is a unique opportunity for learning the term "ABS." By contrast, drivers have come to expect use of the word "BRAKE" for other types of brake failure.

While NHTSA believes that greater flexibility is appropriate, it does not believe it would be in the interest of safety to permit multiple acronyms or symbols. While permitting the use of "ABS" will facilitate the learning of that acronym by drivers, drivers cannot be expected to learn the meaning of multiple acronyms or symbols for the same message. NHTSA notes that this action may help facilitate international harmonization, since one of the symbols being considered by the ISO for antilock failure incorporates "ABS."

Since NHTSA considers it appropriate to permit only one alternative to "ANTILOCK," it is necessary that use of that alternative be available to all manufacturers. Accordingly, the agency contacted Mercedes-Benz concerning whether its parent company, Daimler-Benz, was willing to waive protection of its trademark and grant a general approval to use "ABS" for all types of antilock braking systems. Daimler-Benz executed a declaration, which included the following statement:

If the term "ABS" is permitted under 49 CFR Part 571, *Federal Motor Vehicle Safety Standards*, by the National Highway Traffic Safety Administration, United States Department of Transportation, as an alternative to "ANTILOCK" for identifying telltales for malfunctions in antilock brake systems, Daimler-Benz Aktiengesellschaft hereby declares that it waives the protection of its trademark and grants a general approval to use the term "ABS" as a symbol for all types of anti-lock brake systems.

The declaration executed by Daimler-Benz has been placed in the docket. NHTSA believes that the waiver resolves the trademark concerns raised by commenters. Since it is clear that all manufacturers can now use "ABS," the agency does not believe consumers will associate the term with any particular company.

Since this amendment imposes no new requirements but instead increases manufacturer flexibility by relieving a restriction, NHTSA has determined that an effective date of 30 days after publication in the **Federal Register** is in the public interest.

The agency has analyzed this amendment and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of this amendment are so minimal that a full regulatory evaluation is not required. Since amendment imposes no new requirements but simply permits alternative identification of the telltale for antilock failure, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. Small businesses, small organizations, and small governmental units are affected by the amendment only to the extent that they purchase motor vehicles. For the reasons discussed above, the amendment will not significantly affect vehicle prices. Accordingly, no regulatory flexibility analysis has been prepared.

Finally, the agency has considered the environmental implications of this rule in accordance with the National Environmental Policy Act of 1969 and determined that it will not significantly affect the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.101 [Amended]

2. In Table 2 of § 571.101, the identifying words or abbreviation for malfunction in anti-lock (row 9, column 3, above the dotted line) is revised to read as follows:

Antilock, Anti-lock, or ABS. Also see FMVSS 105.

§ 571.105 [Amended]

3. S5.3.5(a) of § 571.105 is revised to read as follows:

S5.3.5(a) Each indicator lamp shall display word, words or abbreviation, in accordance with the requirements of Standard No. 101 (49 CFR 571.101) and/or this section, which shall have letters not less than ⅛-inch high and be legible to the driver in daylight when lighted. Words in addition to those required by Standard No. 101 and/or this section and symbols may be provided for purposes of clarity.

4. S5.3.5(c)(1)(C) of § 571.105 is revised to read as follows:

(C) If a separate indicator lamp is provided for an anti-lock system, the single word "Antilock" or "Anti-lock", or the abbreviation "ABS", may be used for S5.3.1(c).

Issued on May 21, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-12179 Filed 5-27-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 60231-7097]

Regulations Governing the Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule; final notice of decision and issuance of a general permit.

SUMMARY: This action establishes regulations to govern the taking of marine mammals incidental to Japanese high seas salmon fishing in the North Pacific Ocean within the U.S. Exclusive Economic Zone (EEZ). The regulation provides for a general permit to be issued under the Marine Mammal Protection Act (MMPA) allowing an aggregate taking during the three year permit period of no more than 789 Dall's porpoise in the Bering Sea and 5,250 in the North Pacific Ocean, of which no more than 448 may be taken in the Bering Sea and no more than 2,494 may be taken from the North Pacific Ocean in any single calendar year. The NMFS will monitor the affected fishery to insure that the quotas are not exceeded.

EFFECTIVE DATE: The rulemaking and general permit become effective June 10, 1987.

ADDRESS: Assistant Administrator for Fisheries, NMFS, Washington, DC 20235. An FEIS, Economic Impact Analysis, ALJ Decision and copy of the General Permit are also available upon request.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources and Habitat Programs, NMFS, Washington, DC 20235, Telephone: 202/673-5351.

SUPPLEMENTARY INFORMATION: On August 20, 1986 (51 FR 29674) NOAA published a Notice of Receipt of Permit Application, Notice of Formal Hearing, Notice of Formal Hearing Procedures and a Notice of Proposed Regulation. The proposal and other relevant information were reviewed in a formal hearing before Administrative Law Judge (ALJ) Hugh J. Dolan, in Seattle, Washington, on December 1-7, 1986, in accordance with 5 U.S.C. 556 and 557 and 16 U.S.C. 1373(d). Opening briefs were filed on December 29, 1986, and reply briefs on January 19, 1987. The recommended decision of the ALJ was issued on March 6, 1987. Exceptions to the ALJ's recommended decision were filed on April 2, 1987. The parties participating in the hearing are listed in the Final Decision document.

I am now publishing the final decision and regulation governing the taking of marine mammals incidental to commercial salmon gillnet fishing, and issuing the related MMPA permit. As provided in 50 CFR 216.24(c)(6)(v), I am waiving the usual fee for certificates of inclusion issued under this permit.

Decision of the Under Secretary signed on May 14, 1987, on the Application of the Federation of Japan Salmon Fisheries Cooperative Association to Take Marine Mammals Incidental to Commercial Fishing Operations.

I. Background

Japanese fishing vessels using drift gillnet gear are authorized by treaty to fish for salmon at certain times and places within that portion of the United States' exclusive economic zone (EEZ) west of 175° E. longitude. [1] The treaty requires Japanese vessels to abstain from salmon fishing at other times and in other parts of the North Pacific Ocean and the Bering Sea. Within the EEZ, the Japanese salmon fishery is subject to the Marine Mammal Protection Act (MMPA). [2] The MMPA, among other requirements, prohibits the capture of marine mammals by commercial fishing vessels within the EEZ unless such vessels have been issued an incidental take permit by the Secretary of Commerce. [3]

The Federation of Japan Salmon Fisheries Cooperative Association (Federation) received a 3-year general permit in 1981 that authorized its members an annual incidental take of 5,500 Dall's porpoise, 450 northern fur seals, and 25 northern (Steller) sea lions. [4] This permit was extended legislatively through June 9, 1987, on condition that further research be performed. [5] On July 23, 1986, the Federation applied for a new permit that would, in effect, extend the 1981 permit for 5 more years, through June 9, 1992.

Under the formal rulemaking procedures required by the MMPA, the National Marine Fisheries Service (NMFS) published two notices in the **Federal Register** of its intent to issue the requested permit for 5,500 Dall's porpoise and 450 northern fur seals from the Commander Islands stock. [6] These two notices also contained the statements required by section 103(d) of the MMPA concerning the status of each stock and the effects of any permitted taking on its optimum sustainable population (OSP). A Draft Environmental Impact Statement (DEIS) was also prepared and issued. [7] No notice was published with respect to northern sea lions or northern fur seals from the Pribilof Islands because of separate agency action to list those stocks as depleted, a determination that precludes issuance of an incidental take permit under the MMPA. [8]

A formal hearing on the requested permit and associated regulations was conducted by Administrative Law Judge (ALJ), Hugh J. Dolan, in Seattle, Washington, on Dec. 1-7, 1986. The Federation, the National Marine Fisheries Service, the Marine Mammal Commission, the Kokechik Fishermen's Association, the Qaluyaat Fishermen's Association, Greenpeace International, Greenpeace USA, the American Humane Association, the American Society for the Prevention of Cruelty to Animals, the Animal Protection Institute, Friends of the Earth, Friends of the Whales, the Fund for Animals, the Humane Society of the U.S., the International Fund for Animal Welfare, the International Wildlife Coalition, the Massachusetts Society for the Prevention of Cruelty to Animals, the Society for Animal Protective Legislation, the Washington Humane Society, the Whale Center, the Sierra Club, and the Center for Environmental Education participated in these proceedings. ALJ Dolan considered over 3,500 pages of testimony, exhibits and legal briefs, before issuing his recommended decision, which is attached hereto. The ALJ recommends that a 5-year permit be issued to the Federation that would allow 1750 Dall's porpoise and 45 northern fur seals from the Commander Islands stock to be killed or seriously injured during 1987. For each of 4 subsequent years, the ALJ recommends that the quota for Dall's porpoise be reduced 5 per cent from the previous year. The ALJ also made findings and recommendations concerning permit terms and conditions and further research needs.

II. Decision

1. Summary of the Decision. I find, based on the record of the hearing, the ALJ's recommended decision, the exceptions filed thereto, and the Final Environmental Impact Statement (FEIS), that there are two Dall's porpoise stocks affected by this decision, the Bering Sea stock and the western North Pacific Ocean stock, that both stocks are above the minimum levels of their optimum sustainable populations, that a 3-year block quota on the killing or serious injury of 6,039 Dall's porpoise with lower annual quotas for each stock will not be to the disadvantage of either stock. I further find that these incidental take quotas will maintain each stock above the minimum level of its optimum sustainable population for the duration of the permit and are consistent with the policies and purposes of the MMPA. I further find that the block and annual quotas are economically and technologically feasible at this time, but that lower quotas are not.

With respect to northern fur seals, I find that I am not able at this time to issue an incidental take permit because the record is unclear as to whether the Commander Islands stock is above the minimum level of its optimum sustainable population. Accordingly, and in recognition of the depleted status of the Pribilof Islands stock, the permit and the accompanying regulations allow no takings of northern fur seals.

2. Detailed Findings. The recommended decision of the ALJ is attached. In reaching my decision, I adopt and incorporate by reference, unless specifically noted otherwise, the description of the issues, the findings of fact, the conclusions of law, the accompanying rationale, and the methodology used by the ALJ in reaching his recommended decision.

a. Population Estimates—Dall's Porpoise

(1) Classification of Stocks

I adopt the ALJ's finding that the best scientific evidence indicates there are three stocks of Dall's porpoise related to this proceeding. Those stocks are the Bering Sea stock, the eastern North Pacific Ocean stock, and the western North Pacific Ocean stock. I further adopt the ALJ's finding that the Japanese salmon fisheries affect only the Bering Sea and western North Pacific Ocean stocks. [9]

I recognize that the permit applicant, supported by some of the scientific data, contends that there is but one stock in the North Pacific Ocean. Although the Scientific data is subject to various interpretations, the ALJ determined that the weight of the evidence favored a separation of eastern and western stocks. [10] I agree. In any event, since it has been determined, *infra*, that the western North Pacific Ocean stock is above its OSP and that an allowable level of taking would not be to that stock's disadvantage, a separation of these two stocks does not affect the decision to issue an incidental take permit in this proceeding. Quite clearly, however, further research is necessary to better determine the relationship between Dall's porpoise in the eastern and western portions of the North Pacific Ocean. Due to the rapid expansion of the high seas squid fishery in waters beyond the U.S. EEZ, stock separation may become a critical factor in any subsequent MMPA proceedings.

(2) Present Population Levels

The ALJ adopted the NMFS procedure for estimating the present population of each stock of Dall's porpoise. [11] The approach used has been used by NMFS in other MMPA proceedings and is endorsed by the Marine Mammal Commission. Specifically, the ALJ determined that the use of the line transect methodology to determine density of animals within each area and the application of that density to limited portions of the Bering Sea and the western North Pacific Ocean provides the best scientific information as to the present numbers of Dall's porpoise in each stock. However, in agreeing with the NMFS procedure, the ALJ evidently overlooked the fact that the estimates he approved were for 1980, not 1985. The 1987 estimates must be derived by applying estimates of natural reproduction and estimates for kill by the various fisheries affecting each stock. Using figures approved by the ALJ, and adopted by me, *infra*, I find that the present population of the Bering Sea stock is 216,118 and that the present population of the western North Pacific Ocean stock is 692,854. [12]

(3) Status of Stocks

I adopt the procedure used by the ALJ to determine whether both Dall's porpoise stocks are presently within their OSP. [13] Specifically, I find that estimation of the pre-exploitation population for each stock to determine the population level which is the largest supportable within the ecosystem is the best methodology for determining the upper limit of OSP. This back-calculation procedure has been used in NMFS tuna/porpoise hearings and in the 1981 Dall's porpoise hearing and is supported by all parties as the appropriate methodology for estimating the pre-exploitation population. The parties disagree as to the time when exploitation commenced, the estimated natural recruitment rate, and the estimated kill rates of the various fisheries that are necessary to perform the back-calculation procedure. As a result there is considerable disagreement as to what the estimate of the pre-exploitation population should be.

(a) *Pre-Exploitation Date.* The ALJ found that the estimate of the 1951 population derived by back-calculation is the best scientific evidence as to the pre-exploitation population. Thus, in the absence of evidence that the ability of the ecosystem to support that population has changed, the ALJ determined that population level is the best estimate of the upper bound of OSP. [14] Although there was some evidence presented that salmon fishing, and consequent Dall's porpoise mortalities, commenced sometime prior to 1941, the weight of the evidence suggests that the fishing was not extensive in the areas inhabited by these two stocks of Dall's porpoise and that the stocks would have fully recovered during the hiatus in fishing that occurred during and subsequent to World War II. I adopt the ALJ's finding and supporting rationale.

(b) *Maximum Net Reproduction Rate.* The point estimate of the maximum net reproduction rate (Rmax) for Dall's porpoise suggested by the parties ranged from .02 to .10. The ALJ adopted the conservative rate recommended by the Marine Mammal Commission, .04. [15] This rate was within a range of probable values suggested by NMFS, but less than the NMFS recommended rate, .06. I adopt the ALJ's recommendation and supporting rationale.

(c) *Kill Rates.* A great deal of evidence was presented regarding the present kill rates (Kt) for Dall's porpoise in the Japanese salmon fisheries and the multi-national high seas squid fishery. As found by the ALJ, the current evidence supports different rates of kill for the Japanese mothership fishery, for the land-based fishery, and for the various squid fisheries that incidentally take Dall's porpoise. The findings as to the present kill rate in each fishery are discussed below.

(i) *Mothership Fishery.* The ALJ found, and all parties to the proceeding agree, that the kill rate inside the U.S. EEZ is 0.47 Dall's porpoise per set of net. [16] The ALJ, also adopted the same rate for the mothership fishery south of the U.S. EEZ. [17] This figure is very close to the 0.46 figure reported by Japanese scientists and was not opposed by either NOAA or the Marine Mammal Commission. With respect to the Bering Sea beyond the U.S. EEZ, the ALJ found the kill rate to be 0.28, a figure supported by NMFS and the Marine Mammal Commission. [18] I adopt the ALJ's findings that the best scientific evidence suggests the kill rates are 0.47, 0.47, and 0.28 for the three areas in which the mothership fishery operates.

(ii) *Land-Based Fishery.* All parties agree that the data with respect to the kill rate in the land-based salmon fishery is less reliable. The ALJ found that the testimony of one Japanese scientist supported a kill rate of 0.25 to 0.33. This is considerably higher than the 0.13 rate reported by the Japanese fishermen and supported by the Federation. However, it is less than suggested by NMFS and the Marine Mammal Commission at the hearing. Both NMFS and the Marine Mammal Commission agreed that the kill rate for the land-based fishery should be less than in the mothership fishery because the southerly location of the land-based fishery encompasses large areas that are not inhabited by Dall's porpoise. However, the Marine Mammal Commission believed 0.47 should be used until better data was available. The ALJ found that the kill rate for the land-based salmon fishery is 0.33, the highest figure supported by scientific data. [19] In its final comments on the ALJ's recommended decision, the Marine Mammal Commission agreed that the 0.33 rate could be used if the same rate was applied to the squid fisheries. [20] Accordingly, I adopt the ALJ's finding.

(iii) *Squid Fishery.* The kill rate in the high seas squid fishery is most difficult to determine. The only observer data, compiled during 1986, suggests a kill rate of only 0.04 to 0.06. The ALJ, supported by all parties except the Federation, rejected this estimate as based on an inadequate sample size. Instead, the ALJ determined that the kill rate for the land-based salmon fishery, which operates in similar latitudes to the south of the preferred range of Dall's porpoise should be used. [21] That kill rate is 0.33. I adopt this finding for the squid fishery with considerable reservation, noting that the scientific uncertainty operates to the disadvantage of the permit applicant in this instance.

Quite clearly the disparity between the observed rate and the 0.33 rate adopted for this proceeding must be resolved as soon as possible. Due to the rapid growth of the squid fishery beyond the exclusive economic zones of the North Pacific nations, the prospect exists that a large overestimate of the kill rate of Dall's porpoise in the much larger squid fishery could well result in closure of the salmon gillnet fishery within the U.S. EEZ. It is in the federation's immediate interest to press for increased observer coverage of the squid gillnet fleets of all nations participating in that fishery.

(d) *Constancy of Kill Rate.* Through the back-calculation methodology, agreed to by all parties, the population estimate for the pre-exploitation year is estimated by subtracting an estimate of kill and adding an estimate of net reproduction in the intervening years. For the years from 1952 to 1981, the ALJ adopted the estimated kill rate, 0.94, that was used by his predecessor and adopted by the agency in the 1981 permit decision. [22] The federation, NMFS, and the Marine Mammal Commission all object to the use of that figure as the kill rate for this proceeding. They point out that 0.94, although based on the best available data at that time, was derived from only 18 observations, whereas there are now some 2,377 observations available for estimating the kill of Dall's porpoise in the Japanese salmon fishery. [23] Although there is uncertainty as to whether the kill rate fluctuates from year to year, quite clearly the current data, drawn from much more extensive scientific sampling conducted since 1981, are better evidence than was available in the 1981 hearings and must be used in this decision. I therefore find that for the purpose of estimating the preexploitation population, the current kill rates found by the ALJ, and approved by me, above, should be employed throughout the period from 1952 to the present. I note that both NMFS and the Marine Mammal Commission agree with this approach.

(e) *Fishing Effort.* The ALJ calculated the fishing effort in the salmon and squid fisheries from a variety of official Japanese and U.S. data. [24] I adopt the ALJ's findings in this respect.

(f) *Calculated Initial Population.* All parties agreed with the formula used by the ALJ to determine the preexploitation population of Dall's porpoise. [25] That formula was developed by NMFS scientists and has been used in other MMPA proceedings and is accepted here as the appropriate methodology. However, since I have rejected the 0.94 kill rate used by the ALJ for the 1952 to 1981 period, and start from the 1980 estimated populations, the back-calculation must be performed again. That has been done, and the new estimate of the pre-exploitation population of each stock of Dall's porpoise is determined to be: 226.665 for the Bering Sea stock and 860,360 for the western North Pacific stock. As a result, the current populations 216,118, represent 953 and 80.5 per cent, respectively, of the maximum populations that can be supported by the present ecosystem.

(g) *Optimum Sustainable Population.* All parties agreed and the ALJ determined that the maximum net productivity level (MNPL) for Dall's porpoise is 60 per cent of the maximum sustainable population. [26] I adopt that finding. MNPL has been defined by regulation as the lower bound of OSP. [27] Accordingly, I find that both the Bering Sea and the western North Pacific Ocean stocks of Dall's porpoise are well within the range of their optimum sustainable populations. I note that although the ALJ found the status of each stock closer to the MNPL than I have, he also found that both were within their respective OSP ranges. [28]

(4) Disadvantage

The ALJ interpreted the MMPA's protective mandate that any permitted taking incidental to commercial fishing operations not to the disadvantage of the stocks as meaning that the permitted taking should not allow the stock to decline. [29] both NMFS and the Marine Mammal Commission reject that interpretation. I, also, do not agree with the ALJ's conclusion of law. In any event, it is of little consequence to this proceeding is that a second test must be met—the immediate goal test discussed below.

(5) Quotas, Duration of Permit.

The MMPA affirmatively requires additional efforts to reduce incidental kill and serious injury to insignificant levels, approaching zero. This test has been previously interpreted as limiting the number of animals that can be taken to the lowest level that will permit economical fishing operations using existing technology. [30]

The ALJ determined that an annual quota of 1750 Dall's porpoise was achievable by applying the current kill rate in the U.S. EEZ, 0.47, to the expected fishing effort. [31] The Federation notes that the kill rates used are averages which should not be applied to *each* future year. By definition, an average would be exceeded in some years and not attained in others. The Federation suggested that the highest kill rates in the 1981 to 1986 period be used to establish annual quotas that would comply with the immediate goal test. NMFS agrees with the Federation on this point.

The ALJ determined that there would be a 25 per cent reduction in fishing effort within the U.S. EEZ as a result of the reduction in the mothership fleet from 172 catcherboats to 129. [32] The Federation notes that there is no reduction in treaty-authorized vessel-days and that the remaining 129 catcherboats are capable of maintaining the same overall fishing effort as 172 catcherboats by fishing a longer period of time. The objection misses the point. The fishing effort is limited by the salmon quota set by the Soviet Union as well as by the treaty requirements. The record states that the Soviet Union has reduced this quota by 35 per cent. [33] Accordingly, the reduction in fleet size is not likely to lead to increased effort by the remaining boats.

In establishing the quota, the ALJ started with 4,963 sets as the projected fishing effort, reduced that figure by 25 per cent, and multiplied by the 0.47 kill rate, to determine the recommended quota of 1750. The Marine Mammal Commission and NMFS note that the ALJ used projected fishing effort for the western North Pacific portion of the U.S. EEZ, apparently neglecting that portion of the fishery that operates in the Bering Sea portion of the U.S. EEZ. The Marine Mammal Commission recommends that a separate quota be established for the Bering Sea portion of the U.S. EEZ in view of the separate stock of Dall's porpoise that would be affected by the fishery north of the Aleutian Islands. Using the projected fishing effort contained in Appendix C to the ALJ's decision, and the ALJ's methodology, the 1987 annual quota for the Bering Sea stock would be 891 sets, reduced by 25 per cent, multiplied by the 0.47 kill rate within the U.S. EEZ, for a total of 314. In 1988, the effort projected declines to 803; the resultant quota for that year, according to the ALJ's formula, would be 283. In 1989, the effort projected declines to 545; the resultant quota for that year, according to the ALJ's formula, would be 192.

The ALJ determined that a 5-year permit duration was appropriate, but that the quotas beyond 1987 should be reduced 5 per cent each year. [34] However, the ALJ made no finding that improvements in fishing technology would be possible. The Marine Mammal Commission supported the 5 per cent quota reduction, but recommended that only a three-year permit be issued in light of data deficiencies that need to be addressed.

As noted above, annual quotas based on average kill rates would unnecessarily restrict the Federation's operations in the years the actual rate would exceed the average. However, there has been no showing by the Federation that a 3-year block quota would put them at a disadvantage. Accordingly, the quotas that I now establish for each stock are: (1) Maximum annual quotas based on the highest kill rate attained during any one year from 1981 to 1986, and, (2) 3-year block quotas based on 1981–1986 average take. The kill rate used in setting the maximum annual quota is 0.67, the highest observed rate within the U.S. EEZ during 1981–1985. Within the respective portions of the U.S. EEZ, the quotas on kill or serious injury of Dall's porpoise are:

Bering Sea—448 in any one year, 789 for 1987–1989.

North Pacific—2494 in any one year, 5250 for 1987–1989.

Given the estimates of current population for each stock and the estimated recruitment and kill rates, the Bering Sea stock will continue to grow at the level of permitted take to approximately 217,417 animals or 95.9 percent of its estimated preexploitation population by 1989. The western North Pacific Ocean stock will decline slightly to approximately 681,074 animals or 79.1% of the estimated exploitation population by 1989. [35] As a result, I find that neither stock would be disadvantaged by the level of permitted taking.

I have declined to impose a 5 percent reduction in light of my decision to accept the recommendation of the Marine Mammal Commission on duration of the permit. A 3-year permit was considered appropriate in 1981 and Congress granted only a 3-year extension in 1984. Although much more is now known about Dall's porpoise, considerable uncertainty remains as to the effects the Japanese land-based fishery and the much larger multi-national squid fishery are having on the Dall's porpoise stocks in the North Pacific Ocean. The level of uncertainty must be reduced during the next three years.

b. Population Estimates—Fur Seals

The Federation also asked that its members be allowed to take up to 450 northern fur seals annually from the Commander Islands stock. Current population estimates for these fur seals are not in question due to the ease by which they may be enumerated on their island rookeries. In addition, birth rates, or pup production, is also well documented due to its relevance for commercial harvests in ensuing years. The Commander Islands stock is managed by the Soviet Union and the ALJ accepted the Soviet data as the best scientific information available. [36] The stock is estimated at 210,000, with pup production approximately 50,000 to 55,000 per year. Recent commercial harvests of bachelor male seals are between 4,000 and 5,500 per year. According to the ALJ, even under commercial exploitation, the population is stable or increasing. [37] Reviewing records of actual seal captures, and the timing of the salmon fishery relative to the seals' breeding time, the ALJ determined that a permitted taking of 45 Commander Islands fur seals annually would involve sub-adult males, would be *de minimus*, and thus, would not be to the disadvantage of that stock. [38] NMFS scientists supported this conclusion.

The Marine Mammal Commission, the Alaskan native fishing associations and the environmental/animal protection groups all oppose this conclusion. Historic data indicate that only 4 of 21 rookeries on the Commander Islands are now occupied and that the pre-exploitation population may have exceeded 1 to 1.7 million fur seals. [39] If so, and if, as the parties have agreed, 60 per cent of the pre-exploitation population represents the lower bound of OSP, the current population is most certainly well below OSP even if it is stable or increasing. The NMFS pup trajectory analysis, however, supports a finding that the current population is being managed for its maximum sustainable yield and thus is within its OSP. Obviously, this is a signifcant dispute.

As a matter of law, as noted by the Marine Mammal Commission, the MMPA requires an affirmative finding by the agency that a stock is within its OSP before a permit may be issued. [40] The permit applicant has the burden of proof. In this proceeding, the ALJ did not make such a finding. Instead, he said the evidence "suggests" that the stock is within its OSP. [41] The statutory requirement for a finding has not been met. Based on the record before me, I find that I am unable to determine if the Commander Islands stock is within its optimum sustainable population. In recognition of the depleted status of the Pribilof Islands stock, the permit will not include any northern fur seals. The incidental taking of northern fur seals, like the taking of northern (Steller) sea lions, harbor porpoise, Pacific white-sided dolphin, northern right whale dolphin, and killer whales is prohibited by the Marine Mammal Protection Act. [42]

The MMPA's prohibitions will be enforced notwithstanding my confidence in Judge Dolan's conclusion that an annual take of 45 sub-adult male Commander Islands fur seals will not adversely affect a population that is subject to a managed commercial harvest of 4,000 to 5,500 animals per year. Under these circumstances, where a negligible number of nonpermitted takings will occur, and where the stock does not require the absolute protection provided by the MMPA, it is unfortunate that those who must pay the penalties will be determined largely by chance. I intend to seek amendment of the MMPA to permit incidental, but not intentional, takings of small numbers of marine mammals, by vessels engaged in commercial fishing, if such takings will have a negligible impact on the species and stocks. Such an exemption would be similar to the existing exemption for activities other than commercial fishing except that it would not be limited to citizens of the United States in light of our international fisheries obligations.

c. Observers

Data on the incidental take of marine mammals have been collected each year since 1981 by 2 U.S. observers onboard catcherboats from each of the 4 motherships. Between 6 and 6.4 per cent of the fishing operations within the EEZ have been monitored by these observers. The ALJ determined that this level of statistical sampling is adequate and gave a statistical reliability of 95 per cent ±4 per cent. [43] The statement of statistical reliability is incorrect. The 6 per cent level of observer coverage is statistically reliable to 90 per cent ±10 per cent. [44] I adopt the ALJ's decision that a level of observer coverage that is no less than 6 per cent is adequate, provided that the statistical reliability is no less than 90 per cent ±10 per cent.

3. Other Matters

a. *Seabirds.* The ALJ determined that the Department of Commerce and its subordinate agencies did not have jurisdiction under the MMPA to regulate the taking of seabirds. He declined to accept the argument that the birds undoubted contributions to the food web in the North Pacific Ocean and Bering Sea constitute a basis for turning the MMPA into a "utilitarian environmental protection statute" by which the agency could "regulate everything that impacts negatively on marine mammals." [45]. I agree and adopt the ALJ's rationale.

The ALJ determined, however, that such jurisdiction did reside in the Department of the Interior under the Migratory Bird Treaty Act (MBTA) as extended by the President's 1983 proclamation of the Exclusive Economic Zone. [44]. I am not aware of any instance where the Department of the Interior has curtailed a commercial fishery to protect seabirds under the MBTA. I am aware that the official position of the Department of the Interior is that the MBTA jurisdiction is coextensive with the geographic limits of the Untied States, extending seaward only to the 3-mile limit of the territorial sea. [47] I am also aware that Congress has explicitly extended the MMPA to the EEZ, but has not similarly extended the MBTA. Accordingly, I do not adopt the ALJ's conclusion of law that the Department of the Interior has regulatory authority to limit the Japanese salmon fishery under the MBTA. Were it to exercise such authority, the Department of the Interior might also be required to regulate domestic fisheries, including perhaps those of the Alaskan fishermen who participated in these proceedings. [48]

b. *Ecosystem Protection Zone.* The Marine Mammal Commission and the environmental/animal protection groups recommended adoption of an ecosystem protection zone extending 60 miles seaward from the Aleutian Islands. Although offering some potential for benefit to harbor porpoise and northern sea lions, the ALJ determined that the primary motivation for such a zone would be to reduce the incidental take of seabirds. The ALJ declined to recommend that such a zone be established under the MMPA. [49] I approve of that decision, noting that several bills that would impose a seabird protection zone of identical proportions are presently pending before Congress. At that time the effects of fishing practices on seabird populations can be more fully debated. The effects of fishing practices on marine mammals, which is the purpose of this proceeding, have been fully addressed herein.

4. Permit Conditions

The ALJ made extensive recommendations for conditions that NMFS should impose on the recommended permit. These are set out in section XI of the recommended decision appended hereto and are adopted by me with the following modifications:

a. The costs of U.S. observer coverage of the mothership fleet must be borne by the applicant or by the Government of Japan.

b. To the extent that NMFS is capable of providing U.S. marine mammal observers on the Japanese landbased salmon and high seas squid gillnet fleets, they must be readily accommodated.

c. A report must be furnished prior to June 9, 1988, as to the extent of Japanese high seas salmon gillnet fishing in the Bering Sea and North Pacific Ocean prior to 1952.

d. The quotas stated above must be reduced proportionately in the event that the Soviet Union decreases Japan's salmon quota for 1988 or 1989 in either area by more than 10 per cent from the 1987 salmon quota.

e. To insure randomness of observer placement and unbiased sampling, the permit must incorporate the requirements of 50 CFR 611.8(c).

5. Required Statements

Section 103(d) of the MMPA requries the publication of the following statements: (a) Estimated existing levels of the species and population stocks concerned; (b) a statement of the expected impact on the optimum sustainable population (OSP) of such species or population stocks; (c) a statement describing the evidence before the agency; and (d) any studies made by or for the agency and any recommendations made by or for the agency or the Marine Mammal Commission. The following table satisfies the first two requirements.

Stock	Present population	Present OSP status	OSP status at end of 1989
Dall's porpoise (Bering Sea).	216,118	Within	Within.
Dall's porpoise (Western North Pacific Ocean).	692,854	Within	Within.

The references noted in the August 20, 1986, and January 23, 1987, **Federal Register** notices and the record compiled in this proceeding satisfy the final two requirements.

6. Regulation

I have considered the alternatives contained in the FEIS and the DEIS and have concluded that amending the current regulations as set out below is the environmentally preferred alternative and represents the best approach for permitting the incidental take of Dall's porpoise under the MMPA. Accordingly, and based on a full consideration of the record, the recommended decision of the ALJ and my foregoing final decision, that portion of the regulation now appearing at 50 CFR 216.24(d)(5)(vii) is amended to read as follows:

(vii) The number of Dall's porpoise (*Phocoenoides dalli*) killed or injured by Japanese vessels operating in the U.S. EEZ is limited to an aggregate of 789 in the Bering Sea and 5,250 in the North Pacific Ocean over the period 1987–1989, of which no more than 448 may be taken from the Bering Sea and no more than 2,494 may be taken from the North Pacific Ocean in any single calendar year. The incidental take levels authorized by this subpart are reduced proportionately in the event that the Soviet Union reduces salmon quotas for 1988 or 1989 by more than 10 percent from the 1987 quota. Any permit issued under this part must indicate the measures by which the permit holder must comply with the conditions attached to the permit, and the reporting requirements of paragraph (d)(5)(v) of this section. Any permit issued under this part may allow retention of marine mammals for scientific purposes and will not require a separate permit under paragraph (d)(5)(v).

7. Consultation

The MMPA requires that I consult with the Marine Mammal Commission in promulgating regulations. The Commission was consulted prior to the publication of proposed regulations, was a party to the proceedings, appeared before the ALJ, and filed briefs with ALJ. For the most part, I have been guided by the recommendations of the Commission. Where I have not adopted a recommendation of the Commission, I have provided my reasons for doing so. Additionally, I have consulted with the Secretary of Commerce on this decision.

8. Attachments

The permit to be issued to the Federation of Japan Salmon Fisheries Cooperative Association and the recommended decision of Administrative Law Judge Hugh J. Dolan are attached.

9. Effective Date

The permit issued today becomes effective June 10, 1987.

Dated: May 14, 1987.

References

1. The United States, Canada and Japan are parties to the International Convention for the High Seas Fisheries of the North Pacific Ocean. 4 U.S.T. 380, T.I.A.S. 2786, 205 U.N.T.S. 65. The most recent amendment to the annexes of this convention requires Japan to further restrict the fishing activities of Japanese salmon vessels within the Bering Sea, within the U.S. EEZ, and abstain from salmon fishing south of the U.S. EEZ and east of 174° E. longitude in order to reduce interceptions of salmon stocks of North American origin.
2. 16 U.S.C. 1361–1407.
3. 16 U.S.C. 1372(a)(5).
4. 46 FR 27056, May 15, 1981.
5. Pub. L. 97–389.
6. 51 FR 29674, Aug. 20, 1986; 52 FR 2566, Jan. 23, 1987.
7. 51 FR 31837, Sept. 5, 1986.
8. 16 U.S.C. 1371(a)(3)(B).
9. Recommended decision (RD), p. 25.
10. RD, pp. 22–24.
11. RD, pp. 25–30.
12. Final Environmental Impact Statement, Tables 55, 56.
13. RD, pp. 51–58.
14. RD, p. 51.
15. RD, pp. 32–33.
16. RD, p. 38.
17. RD, p. 39.
18. RD, p 39.
19. RD, pp. 39–42.
20. Exceptions and Recommendations of the Marine Mammal Commission, April 2, 1987, p. 9.
21. RD, pp. 42–44.
22. RD, pp. 45–48.
23. NOAA Response, April 2, 1987, p. 9.
24. RD, pp. 48–50.
25. RD, pp. 51–52.
26. RD, p. 31.
27. 50 CFR 216.3.
28. RD, p. 58.
29. RD, p. 14.
30. 45 FR 72180.
31. RD, p. 60.
32. RD, p. 60.
33. Mr. Shima, hearing transcript, p. 556.
34. RD, p. 61.
35. Final Environmental Impact Statement, Tables 55, 56.
36. RD, p. 66.
37. RD, p. 67.
38. RD, pp. 67–68.
39. RD, pp. 65–66.
40. 16 U.S.C. 1373(d), Committee for Humane Legislation v. Richardson, 414 F.Supp. 297, 311–312, (D.D.C. 1976), aff'd 540 F.2d 1141 (D.C. Cir. 1976).
41. RD, p. 68.
42. 16 U.S.C. 1372(a)(5).
43. RD, pp. 34, 85.
44. NOAA Exhibit 2, pp. 10, 11.
45. RD, p. 76.
46. 16 U.S.C. 703–712.
47. Memoranda from Assistant Solicitor, Fish and Wildlife, dated Dec. 11, 1980, and March 27, 1981.
48. Alaskan natives enjoy a limited exemption from the MBTA. It is unclear whether unintended takes of migratory birds in a commercial fishery would qualify for this exemption. See 50 CFR 20.132.
49. RD, p. 79.

Classification

The NMFS has determined that this action is a major Federal action under the National Environmental Policy Act of 1969 due to the overall public interest associated with the Japanese salmon fishery and its interaction with Dall's porpoise and other marine organisms. A Final Environmental Impact Statement (FEIS) has been prepared and distributed for public review and comment.

This rulemaking is an administrative action being developed on the record under the Administrative Procedure Act (5 U.S.C. 556 and 557) and, as such, is exempt from Executive Order 12291.

This rule relieves a restriction that would otherwise apply to the Japanese salmon fishery. As authorized by 5 U.S.C. 553, a full 30 day delayed effectiveness period is not required.

This rule mentions collection of information requirements subject to the Paperwork Reduction Act. The collection of information for general permits, certificates of inclusion and reporting takes has been approved by the Office of Management and Budget under Control Nos. 0648–0083 and –0099.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities. While the action will result in a continuation of the loss of salmon to Alaskan commercial fishermen of approximately $8.02 million, the identified alternatives to the action would result in a loss of from $87.4 million to $133.7 million.

The Assistant Administrator has determined that the action does not directly affect the coastal zone of a State with an approved Coastal Zone Management Act program.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Marine Mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: May 22, 1987.

James E. Douglas, Jr.,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

PART 216—[AMENDED]

For the reasons set out in the Preamble and Final Decision, 50 CFR Part 216 is amended as follows:

1. The authority citation for Part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise stated.

2. In § 216.24, paragraph (d)(5)(vii) is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

(d) * * *

(5) * * *

(vii) The number of Dall's porpoise (*Phocoenoides dalli*) killed or injured by Japanese vessels operating in the U.S. EEZ is limited to an aggregate of 789 in the Bering Sea and 5250 in the North Pacific Ocean over the period 1987 to 1989, of which no more than 448 may be taken from the Bering Sea and no more than 2494 may be taken from the North Pacific Ocean in any single calendar year. The incidental take levels authorized by this subpart are reduced proportionately in the event that the Soviet Union reduces salmon quotas for 1988 or 1989 by more than 10 percent from the 1987 quota. Any permit issued under this part must indicate the measures by which the permit holder must comply with the conditions attached to the permit, and the reporting requirements of paragraph (d)(5)(v) of this section. Any permit issued under this part may allow retention of marine mammals for scientific purposes and will not require a separate permit under paragraph (d)(5)(iv).

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