



MARINE MAMMAL COMMISSION

1 May 2012

Mr. David Bernhart
Assistant Regional Administrator for Protected Species
National Marine Fisheries Service
263 13th Avenue, South
St. Petersburg, FL 33701-5505

Dear Mr. Bernhart:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's 12 April 2012 *Federal Register* Notice (77 Fed. Reg. 21946) proposing a rule to amend the Bottlenose Dolphin Take Reduction Plan. The new rule would make permanent an existing seasonal restriction that is set to expire on 26 May 2012. The rule bans nighttime fishing off North Carolina with gillnets of medium mesh to minimize the incidental bycatch of bottlenose dolphins. The Commission offers the following recommendation and rationale.

RECOMMENDATION

The Marine Mammal Commission recommends that the National Marine Fisheries Service adopt its proposed rule to make permanent the existing seasonal ban (1 November to 30 April) on nighttime fishing off North Carolina with gillnets having a mesh size of 5 to 7 inches.

RATIONALE

Under the Bottlenose Dolphin Take Reduction Plan adopted in 2006, the National Marine Fisheries Service promulgated a rule to ban nighttime fishing with gillnets of 5 to 7 inches mesh width (the size used to catch dogfish) off North Carolina. The restriction began in April 2007 and thereafter was imposed from 1 November to 30 April until the end of April 2009. The purpose was to reduce the bycatch of bottlenose dolphins in the winter-mixed management unit, one of the seven management units that have been identified for western North Atlantic coastal bottlenose dolphins.

Between 1996 and 2000 the spiny dogfish fishery was the primary source of documented bottlenose dolphin deaths incidental to commercial fishing off mid-Atlantic coastal states. Most of those deaths occurred off North Carolina, where the highest bycatch rates were in nets left in the water for more than 12 hours overnight. The Service first convened a Bottlenose Dolphin Take Reduction Team in November 2001 to recommend measures to reduce the take. In fact, bycatch in the dogfish fishery declined significantly after 2000, primarily because fishery managers reduced fishing effort to rebuild overfished dogfish stocks. The take reduction team recognized that reduced fishing effort had incidentally benefited dolphin conservation, but it also was aware that fishery managers could increase quotas at any time. It therefore recommended a temporary ban on nighttime gillnet fishing to limit net soak times to less than 12 hours. The Service adopted a

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Bottlenose Dolphin Take Reduction Plan in May 2006 and, as part of that plan, it established a three-year ban on nighttime fishing to address uncertainty about possible changes in the dogfish fishery management plan. The Service also wanted to ensure that the Bottlenose Dolphin Take Reduction Team had an opportunity to review the impacts of any fishery management actions on dolphin bycatch.

Indeed, fishery managers subsequently increased dogfish quotas and, for the reasons noted above, the Bottlenose Dolphin Take Reduction Team recommended extending the rule for three more years while the Service considered whether to make the measure permanent. The Service subsequently extended the measure for three additional years (through 26 May 2012) and, at its September 2009 meeting, the team again recommended that the Service make the rule permanent. The Service's 12 April 2012 *Federal Register* notice does so.

Since the rule was last extended, spiny dogfish landings in North Carolina have increased significantly following a spiny dogfish stock rebuilding program and, within a few years, landings may approach levels not seen since the 1990s before the fishery was declared overfished. The expanding fishery poses an increasing risk to bottlenose dolphins.

Fishery observer and marine mammal stranding program data indicate that the nighttime ban on medium mesh gillnets has reduced bottlenose dolphin bycatch and the Commission believes that the team's recommendation and the Service's proposed action are sensible and appropriate. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service adopt its proposed rule to make permanent the existing seasonal ban (1 November to 30 April) on nighttime fishing off North Carolina with gillnets having a mesh size of 5 to 7 inches.

Please contact me if you or your staff has questions regarding the above recommendation and rationale.

Sincerely,

Timothy J. Ragen, Ph.D.
Executive Director