

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

14 June 2004

Mr. P. Michael Payne
Chief, Marine Mammal Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Mr. Payne:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the notice of proposed rulemaking regarding the List of Fisheries for 2004 (*Federal Register* 69:19365-19386). The Commission offers the following comments and recommendations.

In a letter dated 10 February 2003 reviewing the 2003 List of Fisheries (see attached), the Commission recommended that the Service provide more detailed descriptions of the basis for its rankings. In most category III fisheries and some category II fisheries, for example, no marine mammal mortality and serious injury are documented. It is not possible to determine, however, whether the fisheries were adequately observed and no marine mammals were taken or whether the fisheries were not adequately observed and mortality and serious injury may have occurred but simply were not documented. This information also is often absent or difficult to interpret in the Service's stock assessment reports. The public is not well informed on such matters and cannot be expected to comment meaningfully on the List of Fisheries if this important information is lacking. Therefore, the Marine Mammal Commission reiterates its recommendation that the Service provide a better description of the basis for its rankings in the annual List of Fisheries, including the level of observer coverage in each fishery.

Hawaii Longline Fishery

The Service proposed a category I ranking for the Hawaii longline fishery based on an annual false killer whale mortality estimate (4.4 animals) that exceeds the potential biological removal level (1.2) for this stock. The Service's description of the fishery indicates that abundance for the false killer whale may be underestimated and its mean mortality may be overestimated, suggesting a category I ranking may be too conservative.

However, there are multiple, reasonable counterarguments that, in fact, abundance of this stock may be overestimated and mortality underestimated. For example, abundance may be overestimated because the Service used a $g(0)$ value based on delphinids, which often occur in smaller groups and are more difficult observe. This $g(0)$ value may be inappropriately low for false killer whales, thereby resulting in an overestimate of abundance. Similarly, mortality may be underestimated because (1) some hooked and thus seriously injured whales may break free of the longline before reaching the boat, (2) some false killer whales from the prospective "Hawaiian

stock" may be taken outside the U.S. Exclusive Economic Zone (EEZ) by either the Hawaii-based fleet or foreign fishing vessels, and (3) false killer whales observed taken in Palmyra EEZ may be part of the Hawaii stock.

Given the many uncertainties regarding the abundance and mortality estimates of false killer whales, the Commission believes that the Service has appropriately interpreted the best available scientific information to rank the Hawaii longline fishery. Therefore, the Marine Mammal Commission recommends that the Service recategorize the Hawaii longline fishery as category I.

Delineation of Alaska Fisheries

In 2003 the Service proposed recategorizing the Alaska Bering Sea/Aleutian Islands groundfish trawl fishery as a category II fishery. However, in the final List of Fisheries for 2003, the Service did not rank the fishery as category II but instead described a plan to redefine the fisheries by spatial extent and target species and then to reevaluate the categorizations. In the 2004 proposed List of Fisheries, the Service delineated the Alaska fisheries in what is arguably a much more appropriate manner but did not make clear when it plans to recategorize the fisheries. Furthermore, because the new fishery definitions, however appropriate, are not described in previous stock assessment reports, it is not clear how known takes will be accounted for and under what fisheries. For example, the most recent stock assessment reports for central North Pacific and western North Pacific humpback whales indicate that humpback whales were taken in the trawl and pot fisheries but do not specify which species were targeted in the fisheries that actually took the whales. Therefore, it is impossible for the public to determine which of the newly delineated fisheries should be recategorized based on humpback whale takes. To resolve this uncertainty, the Marine Mammal Commission recommends that the Service promptly update the relevant stock assessment reports with the new fishery delineations, determine which fisheries are responsible for the takes, and recategorize the fisheries accordingly.

In its review of the 2003 List of Fisheries, the Commission recommended that the Service review its efforts with regard to the western North Pacific stock of humpback whales to ensure that all reasonable conservation measures are being taken to protect it from mortality in Alaska trawl fisheries. Based on the redefinition of the fisheries in this region, the Service should be in a better position to evaluate its monitoring and management schemes and the stock's vulnerability to specific fisheries. With that in mind, the Marine Mammal Commission reiterates its recommendation that the Service review its monitoring and management scheme to ensure that it is providing adequate protection for this vulnerable stock.

Gulf of Mexico Fisheries

In its letter reviewing the 2003 List of Fisheries, the Commission discussed two Gulf of Mexico fisheries: blue crab trap/pot fishery and the menhaden purse seine fishery. The available stranding data indicate that the blue crab trap/pot fishery should be ranked as a category II fishery based on the level of bottlenose dolphin mortality and serious injury in the fishery. For that reason, in 2003 the Commission recommended that the Service review the evidence and categorize the fishery accordingly. Similarly, the best available data indicated that a recategorization of the Gulf of Mexico menhaden purse seine fishery may be warranted, and the Commission recommended that the Service designate that fishery as category I and institute an observer program to obtain more reliable information. However, in both the 2003 final List of Fisheries and the proposed 2004 List of

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Fisheries, the Service cited lack of information on stock structure and fisheries interaction as a reason not to recategorize any Gulf of Mexico fisheries. This approach fails to give the benefit of doubt to the affected dolphin stocks. Furthermore, it undermines the incentive to collect better information on fishery takes. For these reasons, the Marine Mammal Commission recommends that the Service recategorize the Gulf of Mexico blue crab trap/pot fishery as category II and the Gulf of Mexico menhaden purse seine fishery as category I and direct more observer effort to determining the level of fisheries interaction with bottlenose dolphins.

Please let me know if you have any questions or comments.

Sincerely,



David Cottingham
Executive Director