

MARINE MAMMAL COMMISSION  
4340 East-West Highway, Room 700  
Bethesda, MD 20814-4447

10 September 2008

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 proposed rule (73 FR 49634-49638) to amend the Bottlenose Dolphin Take Reduction Plan. The Service is proposing to extend for three years the current seasonal restriction on nighttime fishing off North Carolina with gillnets having a net mesh of 5 to 7 inches in size. We offer the following recommendation and comments.

### **RECOMMENDATION**

The Marine Mammal Commission recommends that the National Marine Fisheries Service adopt the amendment as proposed.

### **RATIONALE**

Under the Bottlenose Dolphin Take Reduction Plan adopted in 2006, the National Marine Fisheries Service promulgated a rule to restrict nighttime gillnet fishing off North Carolina from April 2007 to April 2009. Specifically, the rule prohibited nighttime fishing with gillnets having a stretch-mesh width of 5 to 7 inches (the mesh size used to catch dogfish) from 1 November to 30 April of each year. Its purpose is to reduce the bycatch of bottlenose dolphins in the winter-mixed management unit, one of the seven management units that have been identified for the western North Atlantic coastal bottlenose dolphin population.

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. Bycatch in the dogfish fishery declined significantly after 2000 when fishery managers reduced fishing effort to rebuild overfished dogfish stocks. Recognizing that reduced fishing effort had incidentally benefited dolphin conservation—but that fishery managers could increase quotas at any time—the Service's bottlenose dolphin take reduction plan included a temporary restriction on nighttime gillnet fishing to limit net soak times to less than 12 hours. The intent was to ensure that a dolphin conservation measure would remain in effect even if fishery managers relaxed fishing restrictions under the applicable fishery management plans. In its *Federal*

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*Register* notice, the Service stated that the nighttime fishing restriction was adopted for a three-year period because of uncertainty about possible changes in the dogfish fishery management plan and to ensure that the Bottlenose Dolphin Take Reduction Team had an opportunity to review the status of fishery management actions and their implications for dolphin bycatch.

Over the past three years, fishery managers have increased dogfish quotas, and further increases are expected. In light of increasing dogfish fishing effort and the historically high level of dolphin bycatch in that fishery off North Carolina, the Bottlenose Dolphin Take Reduction Team at its 19–20 June 2007 meeting reached a consensus recommendation that the Service extend the nighttime gillnet fishing restriction off North Carolina for an additional three years. The Service's proposed rule would give effect to that recommendation. We believe that the team's recommendation and the proposed action are sensible and appropriate, and the Marine Mammal Commission therefore recommends that the National Marine Fisheries Service adopt the proposed rule to modify the Bottlenose Dolphin Take Reduction Plan by extending through 30 April 2012 the existing seasonal restriction (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 comments.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive, flowing style.

Timothy J. Ragen, Ph.D.  
Executive Director