



# MARINE MAMMAL COMMISSION

24 November 2010

Ms. Kaja Brix  
Assistant Regional Administrator  
Protected Resources Division, Alaska Region  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, AK 99802

Dear Ms. Brix:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's proposal (75 Fed. Reg. 68767) to authorize for three years the taking of certain endangered and threatened stocks of marine mammals incidental to conducting Alaska-based groundfish fisheries. Stocks that would be included in the authorization are humpback whales (central North Pacific and western North Pacific stocks), fin whales (northeast Pacific stock), sperm whales (North Pacific stock), and Steller sea lions (western and eastern U.S. stocks). If the proposed authorization is approved, the Service would issue a permit allowing participants in the Alaska Bering Sea/Aleutian Island flatfish trawl, Alaska Bering Sea/Aleutian Island pollock trawl, Alaska Bering Sea sablefish pot, and Alaska Bering Sea/Aleutian Island Pacific cod longline fisheries, as well as corresponding state groundfish fisheries, to take these species of marine mammals incidental to their operations.

## RECOMMENDATIONS

The Marine Mammal Commission recommends that the National Marine Fisheries Service—

- issue an authorization under section 101(a)(5)(E) to permit the incidental take of endangered and threatened stocks of humpback whales (central North Pacific and western North Pacific stocks), fin whales (northeast Pacific stock), sperm whales (North Pacific stock), and Steller sea lions (western and eastern U.S. stocks);
- emphasize research and monitoring programs to address uncertainties related to reproduction and survival of the far-western sub-populations of the western U.S. stock of Steller sea lions and re-evaluate the negligible impact determination as new information becomes available;
- work with state and tribal fisheries managers and participants in those fisheries to expand observer coverage in fisheries that may take marine mammals and, as observers provide better data, re-evaluate the negligible impact determination; and
- identify the information gaps related to endangered and threatened species that may be affected by the issuance of the proposed permit and elevate the priority given to addressing those gaps.

## **RATIONALE**

Subject to specified criteria, section 101(a)(5)(E) of the Marine Mammal Protection Act directs the National Marine Fisheries Service to issue permits to authorize the incidental take in commercial fisheries of marine mammal species or stocks listed as threatened or endangered under the Endangered Species Act. Those criteria require the Service to determine that the incidental take will have a negligible impact on the listed marine mammal stocks; an Endangered Species Act recovery plan has been or is being developed for each of the species or stocks; and fishing vessels are in compliance with registration, monitoring, and any applicable take reduction programs.

The Service has reviewed the best available information on marine mammal takes in these Category II fisheries and preliminarily determined that the criteria have been satisfied. The Service has analyzed take rates in these fisheries using observer data and other reports spanning multiple years. Observations of fisheries-related take and other human-caused mortality and serious injury are infrequent and, when combined with the estimated abundance and increasing trends of some stocks (e.g., the central North Pacific stock of humpback whales), indicate that the level of take is likely negligible according to the negligible impact determination criteria set forth by the Service in a 27 May 1999 *Federal Register* notice (64 Fed. Reg. 28800). In addition, the Service has completed Endangered Species Act recovery plans for each of the six stocks that would be covered by the authorization, vessels are properly registered in accordance with section 118 of the Marine Mammal Protection Act, and observer coverage in the federally-permitted fisheries (at least 20 percent) is sufficiently high to instill confidence in the take estimates. The Service has not prepared take reduction plans for these stocks, in part because of insufficient funding but also because the case for convening teams is not compelling. Under these circumstances, the Marine Mammal Commission recommends that the National Marine Fisheries Service issue an authorization under section 101(a)(5)(E) to permit the incidental take of endangered and threatened stocks of humpback whales (central North Pacific and western North Pacific stocks), fin whales (northeast Pacific stock), sperm whales (North Pacific stock), and Steller sea lions (western and eastern U.S. stocks).

The Service appears to have compiled and reviewed the best available scientific and commercial data on which to base a determination under section 101(a)(5)(E) that the proposed authorization would have negligible impacts on the affected stocks. However, analyses of these data raise certain questions and identify certain information gaps regarding the potential impacts of future takes on some stocks.

First, the mean annual human-caused mortality and serious injury for the western U.S. stock of Steller sea lions is 223.8 animals, representing takes from commercial fisheries, tribal fisheries, and permitted research activities. This number is less than the stock's potential biological removal level of 254 animals, as calculated in the draft 2010 Alaska Marine Mammal Stock Assessment Report. As recognized by the Service in its discussion of the negligible impact determination criteria, "as serious injuries and mortalities approach the PBR level, uncertainties in elements such as population size, reproductive rates, and fisheries-related mortalities become more important" (75 Fed. Reg. 68769). The Service's Draft Biological Opinion for the Bering Sea and Aleutian Islands and Gulf of Alaska Groundfish Fisheries Section 7 Consultation, dated August 2010, states that the far-western sub-populations of this stock have declined and notes significant uncertainties about the stock's forage

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base, reproductive rates, recruitment, and survival. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service emphasize research and monitoring programs to address uncertainties related to reproduction and survival of the far-western sub-populations of the western U.S. stock of Steller sea lions and re-evaluate the negligible impact determination as new information becomes available.

Second, observer coverage in Alaska's federal groundfish fisheries has been sufficient to provide scientifically-sound estimates of marine mammal takes in those fisheries. These observer data enable managers to have confidence that future fishing effort under similar conditions should not jeopardize the status of the marine mammal stocks in question. However, comparable observer data are not available for the other fisheries that may incidentally take marine mammals from these stocks, thereby limiting managers' abilities to evaluate the full range of fisheries impacts. As indicated in the proposed Negligible Impact Determinations, the National Marine Fisheries Service observed only one or two state-managed Category II commercial fisheries targeting salmon, each for one to two years. Other fisheries, such as the crab pot fisheries operating in Southeast Alaska, may also have unobserved takes from these stocks of marine mammals. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service work with state and tribal fisheries managers and participants in those fisheries to expand observer coverage in fisheries that may take marine mammals and, as observers provide better data, re-evaluate the negligible impact determination.

Third, the evaluations necessary to undertake the proposed Negligible Impact Determinations focus one's attention on the stock assessments of the marine mammal species in question. The accuracy of the determinations is highly dependent on the quality of available stock information, and in some cases that information is neither thorough nor robust. For example, the existing information is not sufficient for the Service to estimate abundance or potential biological removal levels for the North Pacific stock of sperm whales. Although the Service may employ proxies for these data, such proxies do not necessarily provide a sound foundation for management. In addition, stock assessment reports and fisheries descriptions are not sufficient to determine how the issuance of the proposed permits will affect critically endangered marine mammal stocks in North Pacific waters, such as the North Pacific right whale. The Negligible Impact Determinations did not address this or other species not observed to be taken in the fisheries. Nevertheless, the serious injury or death of a single female North Pacific right whale from a fishery interaction could severely undermine recovery of that species, which highlights the need for increased research and monitoring efforts to ensure that it is adequately protected. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service identify the information gaps related to endangered and threatened species that may be affected by the issuance of the proposed permit and elevate the priority given to addressing those gaps.

Please contact me if you have any questions about our recommendations and rationale.

Sincerely,



Timothy J. Ragen, Ph.D.  
Executive Director