



# MARINE MAMMAL COMMISSION

24 August 2010

Mr. David Cottingham, Chief  
Marine Mammal and Sea Turtle Conservation Division  
Office of Protected Resources  
National Marine Fisheries Service  
1315 East-West Highway  
Silver Spring, MD 20910

Dear Mr. Cottingham:

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 2011 (75 Fed. Reg. 36318). Although the Commission generally concurs with the proposed changes for 2011, it also provides the following recommendations and rationale.

## RECOMMENDATIONS

Based on its review of the draft List of Fisheries for 2011, the Marine Mammal Commission—

- recommends that the National Marine Fisheries Service provide additional justification for splitting the Washington Dungeness crab pot/trap fishery into two fisheries, considering the risks to humpback whales, sea otters, and other marine mammals;
- recommends that the National Marine Fisheries Service consult with the Fish and Wildlife Service, tribal authorities, and other relevant groups on the need for observer coverage of the Washington Dungeness crab pot/trap fisheries both along the outer coast and in Puget Sound to assess bycatch risks for Washington State sea otters;
- recommends that the National Marine Fisheries Service list the Hawaii kaka line and the Hawaii vertical longline fisheries as Category II fisheries and work with the state of Hawaii to create an effective observer program for them;
- concurs with the National Marine Fisheries Service's proposal to retain a category II listing for the Hawaii shallow-set (swordfish target) longline/set line fishery based on the mortality or serious injury rate of bottlenose dolphins from the Hawaii pelagic stock and the additional information documenting takes of marine mammals from other stocks;
- concurs with the National Marine Fisheries Service's proposal to elevate the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery from Category III to Category II;
- recommends that the National Marine Fisheries Service increase observer coverage in the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery and conduct the stock assessments necessary to estimate reliable potential biological removal levels for the affected marine mammal stocks;
- concurs with the National Marine Fisheries Service's proposal to add the Atlantic spotted dolphin (northern Gulf of Mexico stock) to the list of species/stocks incidentally killed or injured in the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery; and

- recommends that the National Marine Fisheries Service set the boundary between the northeast and mid-Atlantic bottom trawl fisheries at the location that will result in the most reliable estimates of bycatch for the two fisheries.

The Marine Mammal Commission also reiterates several recommendations for the proposed List of Fisheries for 2011 that it noted in previous years. Specifically, the Marine Mammal Commission reiterates its recommendations that the National Marine Fisheries Service—

- develop new methods that will produce accurate, reliable estimates of effort for the fisheries in question, and
- describe in its List of Fisheries the basis for confirming that a fishery warrants a Category III listing.

## **RATIONALE**

### **Washington Dungeness crab pot/trap**

The Service proposes to split the existing Washington Dungeness crab pot fishery into the Washington Puget Sound Dungeness crab pot/trap fishery and the Washington coastal Dungeness crab pot/trap fishery. It proposes to list the former as a Category III fishery and the latter as a Category II fishery based on the serious injury of a humpback whale (CA/OR/WA stock) entangled in Dungeness crab pot/trap gear in 2008. Clearly, the two proposed fisheries would differ based on geography. However, for the purpose of categorizing the fisheries, the decision to split should be based on meaningful evidence that the risks posed to marine mammal species in the two proposed fisheries are, in fact, different, and that the Puget Sound fishery is not likely to take any marine mammals and does not require an observer program. The taking of a single whale in the coastal area of this unobserved fishery is not a sufficient basis for such a conclusion; something more is needed to justify separating the fishery. Additional evidence might include a difference in fishing practices or gear on the coast versus those in Puget Sound, or it might include evidence of different movement patterns of humpback whales and other marine mammals such as sea otters. Without such additional information or long-term observer data, the splitting appears simply to be a means of reducing management and observer requirements. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service provide additional justification for splitting the Washington Dungeness crab pot/trap fishery into two fisheries, considering the risks to humpback whales, sea otters, and other marine mammals. That justification should provide compelling arguments that the risks to marine mammals from the two proposed fisheries are, in fact, different and that an observer program isn't needed for the Puget Sound region. Moreover, given previous attention to the issue of sea otter bycatch in this fishery, the Marine Mammal Commission recommends that the National Marine Fisheries Service consult with the Fish and Wildlife Service, tribal authorities, and other relevant groups on the need for observer coverage of the Washington Dungeness crab pot/trap fisheries both along the outer coast and in Puget Sound to assess bycatch risks for Washington State sea otters.

### **Hawaii kaka line and vertical longline**

The Service proposes to add the Hawaii kaka line and the Hawaii vertical longline fisheries to the List of Fisheries as Category III fisheries. The Service notes, and the Commission concurs, that the kaka line fishery may be analogous to the Category II Hawaii shortline fishery. The Commission also considers the vertical longline fishery to be analogous because the mainline and leader line gear is similar (even though it is set in a different orientation) and presents similar risks to marine mammals that may deplete or otherwise interact with the fishery. Given those similarities, the Commission believes that a more appropriate approach would be to establish an observer program to better characterize the nature and level of the interactions of these fisheries with marine mammals, before assuming that such interactions do not or only rarely occur. An observer program is much more likely to be implemented if these fisheries are listed under Category II. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service list the Hawaii kaka line and the Hawaii vertical longline fisheries as Category II fisheries and work with the state of Hawaii to create an effective observer program for them.

### **Hawaii shallow-set longline/set line**

The Service has listed the Hawaii shallow-set (swordfish target) longline/set line fishery as Category II based on interactions with humpback whales from the central North Pacific stock. However, the number of humpback whale deaths and serious injuries observed in this fishery in recent years no longer warrants a Category II listing. Nevertheless, the Service proposes to leave the category the same but to change the justification for that category to one based on interactions with bottlenose dolphins from the Hawaii pelagic stock. The proposed change is justified because the mortality and serious injury rate of bottlenose dolphins is 1.1 percent of the stock's potential biological removal level. The Service also describes occasional deaths and serious injuries of other marine mammal stocks in this fishery, providing additional justification for the Category II listing. The Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to retain a category II listing for the Hawaii shallow-set (swordfish target) longline/set line fishery based on the mortality or serious injury rate of bottlenose dolphins from the Hawaii pelagic stock and the additional information documenting takes of marine mammals from other stocks.

### **Southeastern Atlantic, Gulf of Mexico shrimp trawl**

The Service proposes to elevate the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery from Category III to Category II based on interactions with six marine mammal stocks (mainly bottlenose dolphin) documented in observer reports, stranding data, and fisheries research data. The Service's take estimates for the fishery are limited by poor observer coverage, which has been less than one percent for all years observed and produced a total of 11 observed fishery takes since 2002 (most of which were likely bottlenose dolphins, although some were possibly spotted dolphins). The Service also has documented 10 takes since 2002 in research trawls. Furthermore, the Service can estimate potential biological removal levels for only two of the six stocks because stock assessments are incomplete. The Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to elevate the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl

fishery from Category III to Category II. At the same time, the Commission notes that management of this fishery and its interactions with marine mammals likely will remain inadequate until the Service collects sufficient reliable data on marine mammal mortality and serious injury rates and provides more complete assessments of the marine mammal stocks involved. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service increase observer coverage in the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery and conduct the stock assessments necessary to estimate reliable potential biological removal levels for the affected marine mammal stocks.

The Service proposes to add the Atlantic spotted dolphin (northern Gulf of Mexico stock) to the list of species/stocks incidentally killed or injured in the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. The proposal is based on the death of a spotted dolphin in a research trawl in 2006. The Service further justifies the addition of this stock based on low observer coverage and the location of a number of takes that have involved unidentified dolphins. The Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to add the Atlantic spotted dolphin (northern Gulf of Mexico stock) to the list of species/stocks incidentally killed or injured in the southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery. The Commission believes a precautionary approach is warranted in this case to protect the stock in the absence of better data and to provide the incentive for the Service and fishery participants to collect the needed data to further refine the listing of this fishery.

#### **Northeast and Mid-Atlantic bottom trawl fisheries boundary**

The Service proposes to change the boundary used to separate the northeast and mid-Atlantic bottom trawl fisheries from 72°30' W longitude to 70° W longitude. The latter is used by the Northeast Fisheries Science Center for estimating marine mammal bycatch. For the fisheries involved, this change may have a number of implications that the Commission is not able to evaluate based upon the provided information. The key consideration for the Commission is that incidental taking of marine mammals is correctly attributed to the two fisheries. With that consideration in mind, the Marine Mammal Commission recommends that the National Marine Fisheries Service set the boundary between the northeast and mid-Atlantic bottom trawl fisheries at the location that will result in the most reliable estimates of bycatch for the two fisheries.

#### **Reiteration of Previous Recommendations**

The Service proposes to update estimated effort levels for several mid-Atlantic and New England fisheries based on the number of vessels or persons with state and/or federal permits. The Service notes that estimating effort in this way may overestimate actual effort. The new estimates suggest that this might be the case or that previous estimates significantly underestimated the fishing effort. Based on the information provided, the new estimates for many of the fisheries are more than an order of magnitude larger (e.g., northeast sink gillnet fishery increasing from 341 to 7,712, northeast mid-water trawl from 17 to 953, and North Carolina inshore gillnet from 94 to 2,250). Although the Commission understands that actual effort levels may not be known, the new method of measuring effort reveals significant uncertainty in key fishery information that may confound

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other measures of the fishery and its effects. Although these changes may not have a direct effect on fisheries policy or observer coverage, the broader and longer-term implications of the changes and the associated uncertainty are unknown but potentially significant for management of the marine environment. Therefore, the Marine Mammal Commission reiterates its recommendation that the National Marine Fisheries Service develop new methods that will produce accurate, reliable estimates of effort for the fisheries in question. The methods for estimating effort may need to change depending on the nature of the fisheries (e.g., how often vessels return to port, how large the vessels are, and whether they can carry observers).

Beginning in 2005, the Commission has recommended that the Service include observer coverage for each fishery in the List of Fisheries. The Commission continues to believe that such information is useful for evaluating the adequacy of observer coverage and the amount of confidence that can be placed in reports of mortality or serious injury (or lack thereof) for listed marine mammal stocks. The Service has responded by adding links to its List of Fisheries so that the reader can find that information. The Commission appreciates the Service's efforts in that regard. However, the links only indicate observer coverage for Category I and II fisheries. It also would be useful if the Service provided information justifying the lack of coverage for Category III fisheries. In some cases, it is difficult to tell if reliable information was collected to justify a Category III listing or if a fishery was listed as Category III simply based on a lack of information (i.e., an absence of evidence argument). For that reason, the Marine Mammal Commission recommends that the National Marine Fisheries Service describe in its List of Fisheries the basis for confirming that a fishery warrants a Category III listing.

Please let me know if you have any questions regarding the Commission's recommendations and rationale.

Sincerely,



Timothy J. Ragen, PhD  
Executive Director