

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

3 January 2005

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 2005 (*Federal Register* 69:70094-70117). The Commission offers the following comments and recommendations.

General comments

In previous letters reviewing the 2003 List of Fisheries (dated 10 February 2003) and the 2004 List of Fisheries (dated 14 June 2004), 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. In addition, marine mammal stocks are removed from the list of incidentally injured or killed stocks for individual fisheries if interactions between the stock and the fishery “have not been documented in recent years.” 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. The description also should include variance estimates (e.g., coefficients of variation, CVs) for the mortality and serious injury estimates to allow accurate review of ranking criteria. The variance associated with mortality and serious injury estimates should be considered when classifying fisheries, particularly in cases where the actual value reasonably could be expected to exceed the classification thresholds of 1 percent or 50 percent of PBR (e.g., if the 95 percent confidence interval for the estimate included values above those threshold limits).

Alaska fisheries

In the 2004 List of Fisheries, NMFS developed a new scheme for splitting six broadly defined fisheries into 25 smaller fisheries based on target species and geographic location (Table 1). For example, the AK Bering Sea Aleutian Islands (AK BSAI) groundfish trawl fishery from 2003 was divided into five fisheries, including the AK BSAI Atka mackerel and the AK BSAI flatfish trawl fisheries. The newly delineated fisheries were all classified as category III fisheries in 2004, pending a comprehensive review by NMFS. This analytical review of past incidental mortality and serious injury for each of the newly delineated fisheries was conducted by NMFS for the 2005 List of Fisheries, but the results of that analysis are inconsistent with results provided in the 2003 List of Fisheries for the previous delineation scheme. In particular, many marine mammal stocks included in the lists of incidentally injured or killed stocks for the broadly defined fisheries in 2003 are not included in the related lists for any of the newly delineated fisheries (Table 1). This inconsistency in the 2004 List of Fisheries was not corrected by the analytical review, and the 2005 List of Fisheries remains inconsistent with the 2003 List of Fisheries, with no information provided to excuse or explain the inconsistency (Table 1). The Marine Mammal Commission recommends that NMFS reassess the analysis of past incidental mortality and serious injury for each of the newly delineated fisheries and ensure that all affected marine mammal stocks are included in the lists for each fishery or that the absence of those stocks from the relevant lists is adequately explained. The Commission believes that addressing these inconsistencies likely will not change the classification of any of the newly delineated fisheries, but the substantial discrepancies indicate the possibility of monitoring or reporting error that should be addressed.

Based on the evidence pertaining to marine mammal mortality and serious injury, as reported in the proposed rule, the Commission concurs with the elevation of five newly delineated fisheries to Category II: AK BSAI flatfish trawl, AK BSAI pollock trawl, AK BSAI Greenland turbot longline, AK BSAI Pacific cod longline, and AK Bering Sea sablefish pot. The Commission also notes that the level of mortality and serious injury for the western North Pacific stock of humpback whales in the AK BSAI pollock trawl fishery is almost 50 percent of PBR for that stock. Although a variance estimate (e.g., coefficient of variation, CV) was not provided for the mortality and serious injury estimate, the probability that the actual mortality and serious injury level exceeds 50 percent of PBR may be relatively high. In previous letters reviewing the 2003 and 2004 Lists of Fisheries, the Commission recommended that NMFS review its monitoring and management scheme to ensure that adequate protection was provided for humpback whales from incidental injury and mortality incidental to Alaska trawl fisheries. The proposed 2005 List of Fisheries indicates that five fisheries interact with the central and western North Pacific stocks of humpback whales: the AK BSAI pollock trawl, AK Bering Sea sablefish pot, AK Southeast salmon drift gillnet, AK Southeast salmon purse seine, and Hawaii longline fisheries. The Hawaii longline fishery is currently listed as a Category I fishery (due primarily to interactions with false killer whales), and the AK Southeast salmon drift gillnet and purse seine fisheries are listed as Category II fisheries. Elevation of two Alaska trawl fisheries and the AK Bering Sea sablefish pot fishery to Category II presumably will improve monitoring effort and provide a better basis for assessing potential impacts of these fisheries on humpback whales.

California Fisheries

NMFS proposes to designate the CA/OR thresher shark/swordfish drift gillnet fishery as a Category I fishery. This new designation is based upon research indicating that the PBR for short-

finned pilot whales is lower (1.19) than previously estimated (5.1). Current estimates of mortality and serious injury for the CA/OR/WA stock of short-finned pilot whales incidental to the drift gillnet fishery exceed 50 percent of the new PBR estimate for the stock. For these reasons, the Commission concurs with NMFS's elevation of this fishery to Category I. The Commission also concurs with NMFS that the observer program for this fishery should be continued and that collaboration with the Pacific Offshore Cetacean Take Reduction Team is necessary to address entanglement of marine mammals in the fishery.

Hawaii Fisheries

The Commission concurs with NMFS's decision to classify the Hawaii longline fishery as a Category I fishery. The estimate of mortality and serious injury of false killer whales incidental to the Hawaii longline fishery (4.4) exceeds the PBR (1.2) for the Hawaii stock of false killer whales. As the Commission pointed out in its 14 June 2004 letter commenting on the 2004 List of Fisheries, many uncertainties remain regarding the stock structure, abundance, and mortality estimates of false killer whales, and the Commission believes that NMFS has appropriately interpreted the best available scientific information to rank the Hawaii longline fishery.

Atlantic Fisheries

NMFS proposes elevating the Mid-Atlantic bottom trawl fishery from Category III to Category II based on incidental mortality and serious injury estimates for the western North Atlantic stocks of common dolphins and pilot whales. NMFS is unable to estimate abundance and mortality and serious injury levels separately for long-finned and short-finned pilot whale stocks because scientists conducting surveys and fishery observers are unable to reliably distinguish the two species in the field. Consequently, NMFS grouped the two species to estimate abundance (and therefore PBR) and mortality and serious injury. The resulting incidental mortality and serious injury estimate for both pilot whale species combined (46 per year) was less than 50 percent of the combined PBR for the two pilot whale species (108). However, pooling of species in this manner potentially places one of the species at elevated risk. If the less abundant species is actually killed or injured at a greater rate than the other, it may be experiencing mortality and serious injury levels in excess of 50 percent of PBR. Based on this concern, the Commission recommends that NMFS reclassify the Mid-Atlantic bottom trawl fishery as a Category I fishery until such time as it has developed reliable methods for distinguishing these species for the purposes of estimating abundance and mortality and serious injury levels.

Gulf of Mexico Fisheries

In previous letters reviewing the 2003 and 2004 Lists of Fisheries, the Commission discussed two Gulf of Mexico fisheries: the blue crab trap/pot fishery and the menhaden purse seine fishery. The available stranding data indicated 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, the Commission recommended that the Service review the evidence and categorize the fishery accordingly. Similarly, the best available data indicated that a reclassification 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. Both of these fisheries were listed as Category III fisheries in the 2003 and 2004 Lists of Fisheries, and, unfortunately, they were not considered for reclassification by NMFS in the proposed 2005 List of Fisheries. The Commission reiterates its

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recommendation that the Service classify 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,

A handwritten signature in black ink, appearing to read "David Cottingham", with a long horizontal flourish extending to the right.

David Cottingham
Executive Director

Encl: Table 1, Comparison of lists of marine mammal interactions for selected Alaska fisheries

Table 1: Comparison of lists of marine mammal species and stocks incidentally killed and injured (MM interactions) in Alaskan fisheries as delineated in the 2003, 2004, and proposed 2005 Lists of Fisheries. Six broadly-defined fisheries in the 2003 List of Fisheries were split into 25 smaller fisheries based on target species and geographic location. Italicized marine mammal stocks are not consistently listed among years for the original, broadly-defined fisheries and the new, smaller fisheries. (Abbreviations used: BS = Bering Sea, AI = Aleutian Islands, GOA = Gulf of Alaska, SE = Southeast Alaska, EP = Eastern Pacific, ENP = Eastern North Pacific, NP = North Pacific, CNP = Central North Pacific, WNP = Western North Pacific, P. = Pacific, N. = Northern)

2003 List of Fisheries		2004 List of Fisheries		Proposed 2005 List of Fisheries				
Fishery	MM interactions	Fishery	MM interactions	Fishery	MM interactions			
BSAI groundfish trawl	Steller sea lion, western US	BSAI Atka mackerel trawl	Steller sea lion, western US	BSAI Atka mackerel trawl	Steller sea lion, western US			
	<i>N. fur seal, EP</i>	BSAI flatfish trawl	Steller sea lion, western US	BSAI flatfish trawl	Steller sea lion, western US			
	Killer whale, ENP resident		Killer whale, ENP resident		Killer whale, ENP resident			
	Killer whale, ENP transient		Killer whale, ENP transient		Killer whale, ENP transient			
	<i>P. white-sided dolphin, NP</i>	BSAI Pacific cod trawl	None documented	BSAI Pacific cod trawl	None documented			
	<i>Harbor porpoise, BS</i>		BSAI pollock trawl		Steller sea lion, western US	BSAI pollock trawl	Steller sea lion, western US	
	<i>Harbor seal, BS</i>				Killer whale, ENP resident		Killer whale, ENP resident	
	<i>Harbor seal, GOA</i>				Killer whale, ENP transient		Killer whale, ENP transient	
	<i>Bearded seal, AK</i>				Humpback whale, CNP		Humpback whale, CNP	
	<i>Ringed seal, AK</i>				Humpback whale, WNP		Humpback whale, WNP	
<i>Spotted seal, AK</i>	BSAI rockfish trawl				None documented		BSAI rockfish trawl	None documented
<i>Dall's porpoise, AK</i>		GOA flatfish trawl	None documented	GOA flatfish trawl	None documented			
<i>Ribbon seal, AK</i>	GOA Pacific cod trawl		None documented		GOA Pacific cod trawl	None documented		
<i>N. elephant seal, CA</i>			GOA pollock trawl			None documented	GOA pollock trawl	None documented
<i>Sea otter, AK</i>						GOA rockfish trawl		None documented
<i>P. walrus, AK</i>	GOA rockfish trawl	None documented	GOA rockfish trawl	None documented				
Humpback whale, CNP		GOA pollock trawl		None documented	GOA pollock trawl	None documented		
Humpback whale, WNP	GOA rockfish trawl		None documented	GOA rockfish trawl		None documented		
<i>Fin whale, ENP</i>		GOA flatfish trawl	None documented		GOA flatfish trawl	None documented		
GOA groundfish trawl	<i>Steller sea lion, western US</i>	GOA flatfish trawl	None documented	GOA flatfish trawl	None documented			
	<i>N. fur seal, EP</i>	GOA Pacific cod trawl	None documented	GOA Pacific cod trawl	None documented			
	<i>Harbor seal, GOA</i>	GOA pollock trawl	None documented	GOA pollock trawl	None documented			
	<i>Dall's porpoise, AK</i>	GOA rockfish trawl	None documented	GOA rockfish trawl	None documented			
	<i>N. elephant seal, CA</i>							
<i>Fin whale, ENP</i>								

Table 1 (continued):

2003 List of Fisheries		2004 List of Fisheries		Proposed 2005 List of Fisheries	
Fishery	MM interactions	Fishery	MM interactions	Fishery	MM interactions
BS and GOA finfish pot	<i>Harbor seal, BS</i> <i>Harbor seal, GOA</i> <i>Sea otter, AK</i>	AI sablefish pot	None documented	AI sablefish pot	None documented
		BS sablefish pot	<i>Humpback whale, CNP</i> <i>Humpback whale, WNP</i>	BS sablefish pot	<i>Humpback whale, CNP</i> <i>Humpback whale, WNP</i>
		BSAI Pacific cod pot	None documented	BSAI Pacific cod pot	None documented
		GOA Pacific cod pot	None documented	GOA Pacific cod pot	None documented
Crustacean pot	<i>Harbor porpoise, SE</i> <i>Humpback whale, CNP</i>	SE shrimp pot	None documented	SE shrimp pot	None documented
		SE crab pot	None documented	SE crab pot	None documented
		GOA crab pot	None documented	GOA crab pot	None documented
		BSAI crab pot	None documented	BSAI crab pot	None documented
BSAI groundfish longline	<i>N. elephant seal, CA</i> Killer whale, ENP resident Killer whale, ENP transient <i>Steller sea lion, western US</i> <i>P. white-sided dolphin, NP</i> <i>Dall's porpoise, AK</i> <i>Harbor seal, BS</i>	BSAI Greenland turbot longline	Killer whale, ENP resident Killer whale, ENP transient	BSAI Greenland turbot longline	Killer whale, ENP resident Killer whale, ENP transient
		BSAI Pacific cod longline	None documented	BSAI Pacific cod longline	Killer whale, ENP resident Killer whale, ENP transient
		BSAI rockfish longline	None documented	BSAI rockfish longline	None documented
		BSAI sablefish longline	None documented	BSAI sablefish longline	None documented
GOA groundfish longline	<i>Steller sea lion, western US</i> <i>Harbor seal, SE</i> <i>N. elephant seal, CA</i>	GOA sablefish longline	None documented	GOA sablefish longline	None documented
		GOA Pacific cod longline	None documented	GOA Pacific cod longline	None documented
		GOA halibut longline	None documented	GOA halibut longline	None documented
		GOA rockfish longline	None documented	GOA rockfish longline	None documented