

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

23 May 2005

Ms. Mary Colligan  
Assistant Regional Administrator  
National Marine Fisheries Service  
Protected Resources Division  
1 Blackburn Drive  
Gloucester, MA 01930-2298

Dear Ms. Colligan:

The Marine Mammal Commission is concerned about the lack of compliance with regulations intended to reduce the bycatch of harbor porpoises in the northeast sink gillnet fishery. From 1999 to 2003, the estimated bycatch of harbor porpoises in the Atlantic fishery was 270, 507, 53, 444, and 592 respectively, with an average of 44 additional takes per year in the mid-Atlantic coastal gillnet fishery. Observed harbor porpoise takes remained high in 2004 and the early part of 2005, although bycatch estimates have not yet been calculated. The 1999-2003 bycatch estimates represent a substantial portion of the estimated potential biological removal (PBR) level for harbor porpoises (747) and exceed the zero mortality rate goal of 10 percent of PBR.

The harbor porpoise take reduction plan, which the Service began implementing in 1999, includes several regulations to reduce harbor porpoise bycatch, including gear restrictions, time-area closures of fisheries, and additional time-area requirements for the deployment of acoustic deterrent devices (pingers) on gillnets. When implemented appropriately, these regulations resulted in a substantial decrease in bycatch from more than 1,500 porpoises annually in the early 1990s to the levels mentioned above. The success of this and other take reduction plans, however, ultimately depends on the willingness of the fishing industry to comply with the regulations negotiated during the take reduction process. Fishery observers have reported many instances of fishermen failing to comply with these regulations. Based on information presented to the Atlantic Scientific Review Group, 80 percent of observed northeast sink gillnet fishing trips in 2003 were not in compliance with the regulations (e.g., nets deployed with insufficient numbers of pingers, pingers that did not function properly, or no pingers at all), and 15 observed fishing trips were conducted within the Massachusetts Bay closed area in March 2003 when the area was closed to all gillnet fishing. The Commission is aware that information from observers cannot be used for enforcement actions. The observed violations, however, suggest a systematic pattern of non-compliance that merits immediate attention.

The Commission requests a description of the Service's current and future plans to improve the implementation of the harbor porpoise take reduction plan, including approaches to monitoring

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closed areas, ensuring compliance with the regulations regarding the use of pingers, and assessing whether deployed pingers are functional or not.

Sincerely,

A handwritten signature in black ink that reads "David Cottingham". The signature is written in a cursive style with a long horizontal flourish extending to the right.

David Cottingham  
Executive Director

cc: Mr. Dale Jones  
Mr. P. Michael Payne