

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

3 January 2007

Mr. David Cottingham
Chief, Marine Mammal Conservation Division
National Marine Fisheries Service
Office of Protected Resources
1315 East-West Highway
Silver Spring, MD 20910-3226

Dear Mr. Cottingham:

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 for the 2007 List of Fisheries under the Marine Mammal Protection Act and offers the following recommendations and comments.

RECOMMENDATIONS

Based on its review of the proposed 2007 List of Fisheries, the Marine Mammal Commission

- reiterates a previous recommendation that the National Marine Fisheries Service increase and maintain funding for the Alaska marine mammal observer program at levels sufficient to provide timely assessment of marine mammal takes in Alaska's state-managed fisheries or develop alternative measures to assess such takes;
- recommends that the Service observe the California halibut bottom trawl fishery and reevaluate its classification once reliable information on interactions with marine mammals becomes available;
- recommends that the Service reclassify both the California lobster, prawn, shrimp, rock crab, fish pot fishery and the Washington/Oregon/California crab pot fishery as Category II fisheries based on interactions with humpback whales;
- recommends that the Service expedite analyses of humpback whale stock structure in the North Pacific and increase efforts to observe entangled and stranded whales in southeastern Alaska to obtain a more accurate estimate of serious injury and mortality rates incidental to pot fisheries;
- recommends that the Service develop a scientifically sound estimate of the North Pacific sperm whale population size and its potential biological removal (PBR) level to evaluate the potential impacts of fishery interactions;
- recommends that the Service expand its efforts to collect reliable information on serious injury and mortality rates of marine mammals incidental to Gulf of Mexico fisheries, with priority given to instituting an observer program for the menhaden purse seine fishery and expanding efforts to observe and record instances of bottlenose dolphins entangled in blue crab trap/pot gear; and

- reiterates a previous recommendation that the Service describe the level of observer coverage for each fishery when it publishes the List of Fisheries.

RATIONALE

Pacific Fisheries

Based on fisheries interactions with central North Pacific humpback whales, the Service proposes to elevate to Category II three nearshore fisheries managed by the State of Alaska. These are the Cook Inlet salmon set gillnet and salmon purse seine fisheries and the Kodiak Island salmon purse seine fishery. The Commission agrees that these fisheries merit reclassification and believes that the decision to do so highlights the importance of monitoring marine mammal interactions in state-managed fisheries. The Alaska marine mammal observer program has not been funded sufficiently or consistently and does not provide an adequate basis for characterizing the full extent of such interactions. Currently, the program can provide observers only for one fishery at a time with varying, but usually inadequate, coverage. Because of this limitation and the number of fisheries that should be observed, it will take many years before each fishery has been observed even once. Due to variable funding, the program has been unable to follow through on strategic plans to optimize observer coverage. Following the Commission's annual meeting in Alaska in 2005, the Commission recommended that the Service increase and maintain funding for the Alaska marine mammal observer program at levels sufficient for reasonable assessment of marine mammal take levels in Alaska's state-managed fisheries or consider alternative means for assessing take levels and their population impacts. The Marine Mammal Commission reiterates that recommendation here.

The Service proposes to classify the California halibut bottom trawl fishery as Category III. This fishery has never been observed, and fishery participants have reported no marine mammal interactions. Because the similar Washington/Oregon/California groundfish trawl fishery (also Category III) is known to interact with several marine mammal species, the Marine Mammal Commission recommends that the Service observe the California halibut bottom trawl fishery and reevaluate its classification once reliable information on interactions becomes available.

Several eastern North Pacific humpback whales have been observed entangled in pot gear along the California coast. The potential biological removal (PBR) level for the eastern North Pacific stock of humpback whales is 1.9 and the annual mortality and serious injury rate across all fisheries is at least 1.2. The frequency of entanglement reports along the California coast in recent years strongly suggests that serious injuries and deaths incidental to each of the West Coast pot fisheries are likely to exceed 1 percent of PBR, and thus these fisheries merit classification as Category II. Therefore, the Marine Mammal Commission recommends that both the California lobster, prawn, shrimp, rock crab, fish pot fishery and Washington/Oregon/California crab pot fisheries be reclassified as Category II.

The Structure of Populations, Levels of Abundance and Status of Humpbacks (SPLASH) research program should provide information that will help elucidate the stock structure of humpback whales throughout the North Pacific. The Service currently is considering designating the southeastern Alaska feeding aggregation of central North Pacific humpback whales as a separate stock. Recent reports of stranded or entangled whales suggest that the rate of mortality and serious injury incidental to pot fisheries in southeastern Alaska may be unsustainable. To better assess the potential impact of fishery interactions on this putative stock, the Marine Mammal Commission recommends that the Service (1) expedite analyses of humpback whale stock structure in the North Pacific and (2) increase efforts to observe entangled and stranded whales in southeastern Alaska to obtain accurate estimates of serious injury and mortality rates incidental to pot fisheries.

Sperm whales are known to deplete on some of the catch of the sablefish longline fishery in the Gulf of Alaska, most notably in southeastern Alaska. At least one serious injury of a sperm whale has been observed and, although the current estimated rate of injury/mortality is relatively low (0.45 whale per year), that rate may increase if depredation becomes more common or widespread. Estimates of abundance and PBR are not available for North Pacific sperm whales, so the real impact cannot be reliably assessed. For these reasons, the Marine Mammal Commission recommends that the Service develop a scientifically sound estimate of North Pacific sperm whale abundance and a PBR level that can be used to evaluate potential fishery impacts. We understand that some research is being conducted that may help address this depredation problem, and we encourage the Service to continue to support those efforts.

Atlantic Fisheries

The Service proposes to downgrade the mid-Atlantic mid-water trawl fishery from Category I to Category II. The mean serious injury and mortality rates for the western North Atlantic stocks of common dolphins, white-sided dolphins, and long-finned and short-finned pilot whales are less than 50 percent of PBR; therefore, the fishery no longer merits a Category I classification. The Commission agrees that reclassification is appropriate but encourages the Service to maintain adequate observer coverage in the fishery to provide robust estimates of serious injury and mortality, particularly to inform the Atlantic trawl gear take reduction team.

The Service proposes to classify the mid-Atlantic flynet fishery as Category II based on analogy with similar bottom-trawl fisheries that are known to seriously injure or kill marine mammals. The Commission agrees that this classification is appropriate and encourages the Service to continue to place observers in this fishery to provide the information necessary to assess the frequency of fishery/marine mammal interactions.

Several other fisheries in the Atlantic/Caribbean/Gulf of Mexico region are known to incidentally kill or seriously injure marine mammals, particularly bottlenose dolphins, including the Atlantic/Caribbean/Gulf of Mexico large pelagic longline; Gulf of Mexico gillnet; Gulf of Mexico menhaden purse seine; Gulf of Mexico butterfly trawl; southeastern U.S. Atlantic/Gulf of Mexico shrimp trawl; Gulf of Mexico blue crab trap/pot; and Atlantic/Caribbean/Gulf of Mexico commercial passenger fisheries. The longline fishery is classified as Category I with 3 to 5 percent

coverage in the Gulf of Mexico. The shrimp trawl fishery is classified as Category III, although its members participate in a volunteer observer program with sparse coverage. None of the other fisheries has established an observer program, including the gillnet and menhaden purse seine fisheries, which are Category II.

The stock structure of bottlenose dolphins in the Gulf of Mexico is poorly understood, and it is possible or even likely that some stocks of dolphins are facing unsustainable serious injury and mortality rates incidental to one or more of the fisheries that are not observed. In previous letters reviewing the 2003, 2004, 2005, and 2006 classifications, the Commission raised particular concerns about two Gulf of Mexico fisheries: the blue crab trap/pot fishery and the menhaden purse seine fishery. The available stranding data indicate that the blue crab trap/pot fishery should be ranked as Category II based on the level of bottlenose dolphin mortality and serious injury. For that reason, the Commission recommended that the Service review the evidence and categorize the fishery accordingly. Similarly, the best available data indicate that a reclassification of the Gulf of Mexico menhaden purse seine fishery is warranted, and the Commission recommended that the Service designate that fishery as Category I and institute an observer program to obtain more reliable information. The Service has indicated that it intends to reevaluate these fisheries as new information becomes available, particularly information regarding the stock structure of bottlenose dolphins in the Gulf of Mexico. In response, the Commission recommended that the National Marine Fisheries Service expedite its investigation of bottlenose dolphin stock structure and reevaluate the classification of Gulf of Mexico fisheries. This investigation, however, has taken years, and there is no evidence that it will be completed in the near future. For that reason, the Marine Mammal Commission recommends that the Service expand its efforts to collect reliable information on serious injury and mortality rates of marine mammals incidental to Gulf of Mexico fisheries, with priority given to instituting an observer program for the menhaden purse seine fishery and expanding efforts to observe and record instances of bottlenose dolphins entangled in blue crab trap/pot gear.

General Comments

In previous letters commenting on the 2005 and 2006 Lists of Fisheries (dated 3 January 2005 and 23 May 2006), the Commission recommended that the Service describe the level of observer coverage for each fishery in the List of Fisheries. The draft 2007 list does not include such information. For fisheries known to interact with marine mammals, the Service's stock assessment reports usually include estimates of observer coverage. In contrast, fisheries for which interactions have not been documented in recent years are not described in the stock assessment reports and, therefore, estimates of observer coverage for those fisheries are not readily available to the public. Without such information, it is not possible to determine whether a given fishery was adequately observed and no marine mammals were taken or, conversely, whether the fishery was not adequately observed and mortality and serious injury may have occurred but were not documented. To address this uncertainty, the Marine Mammal Commission reiterates its recommendation that the National Marine Fisheries Service describe the level of observer coverage for each fishery when it publishes the List of Fisheries.

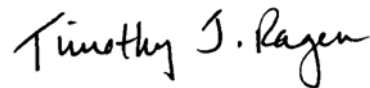
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In addition to the specific issues discussed above, the Commission's review of the draft 2007 List of Fisheries identified two developing issues that merit further consideration. These are fisheries interactions associated with depredation and those associated with trap and pot gear. Marine mammals are known to take the catch or consume the bait deployed in several commercial fisheries. In some cases, this depredation may have detrimental economic impacts on the fisheries. It may also result in marine mammals becoming hooked or entangled in fishing gear, which can cause serious injuries or mortalities. Both depredation and associated fishery interactions appear to be increasing for some fisheries and for some marine mammals. The Commission encourages the Service to support or engage in research on depredation and associated fishery interactions to develop means of reducing or controlling depredation rates and minimizing or mitigating any serious injuries or deaths of marine mammals that may result from depredation-related interactions.

With regard to trap and pot fisheries, several species of marine mammals are known to interact with trap and pot gear, occasionally resulting in serious injuries or deaths, usually as a result of entanglement. The frequency of such interactions is difficult to quantify because traditional fishery observer programs, in which observers monitor the catch for bycaught animals, are unlikely to observe entangled animals, particularly large whales that often carry entangling gear away with them. In the absence of better monitoring, characterization of such problems is often based on anecdotal information, which does not provide an adequate basis for effective management. For that reason, the Commission encourages the Service to work with regional fisheries management councils to improve monitoring and mitigation of serious injury and mortality rates incidental to trap and pot fisheries.

Please contact me if you have questions about these recommendations or wish to discuss them.

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director