MARINE MAMMAL COMMISSION

13 November 2017

Dr. Shannon Bettridge
Acting 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 Dr. Bettridge:

The Marine Mammal Commission (the Commission), in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the National Marine Fisheries Service's (NMFS) notice regarding the proposed List of Fisheries for 2018 (82 Fed. Reg. 47424). The Commission generally concurs with the proposed changes for 2018, and provides the following comments and recommendations for your consideration.

California Drift Gillnet Fishery

NMFS proposes to reclassify the CA thresher shark/swordfish drift gillnet (≥14 inch (in) mesh) fishery (CA DGN) from Category I to Category II based on the most recent estimate of incidental mortality and serious injury (MSI) for the California/Oregon/Washington stock of sperm whales in this fishery. NMFS reports that, over the most recent five-year period, mean sperm whale MSI in the CA DGN fishery was 0.4 animals per year, or 14 percent of the stock's potential biological removal (PBR) of 2.7. Therefore, the fishery fits the criterion for classification as a Category II fishery (mean annual MSI between 10 and 50 percent of PBR). The Commission concurs with NMFS that the CA DGN fishery should reclassified as a Category II fishery.

Gulf of Alaska Sablefish Longline Fishery

NMFS proposes to reclassify the AK Gulf of Alaska sablefish longline (GoAK SLL) fishery from Category III to II based on its interactions with the North Pacific stock of sperm whales. Typically, classifications are based on a numerical comparison of PBR and MSI for a given stock and fishery.[1] Although there is an estimate of sperm whale MSI for the fishery, no PBR level has been set for the stock, and therefore the stock cannot be classified using the numerical method. Instead, NMFS is proposing to reclassify the fishery based on the statutory definitions of fishery categories in the Marine Mammal Protection Act (MMPA).[2] The MMPA defines Category I and II fisheries as those that cause "frequent" or "occasional" incidental MSI, respectively, and Category III fisheries as those for which there is a "remote likelihood" of, or "no known" MSI occurring. In addition to specifying the numerical thresholds corresponding to these statutory definitions of the categories,

[1] If MSI for a given stock, from all fisheries combined, exceeds 10 percent of PBR, then each fishery with documented interactions with the given stock is classified as Category I if its MSI ≥ 0.5PBR (50 percent of PBR), or Category II if its MSI ≥ 0.01PBR (1 percent of PBR), or Category III otherwise (i.e., less than 1 percent of PBR) (50 C.F.R. § 229.2)
[2] Section 118(c)(1)(A)

MMPA implementing regulations explicitly give the Assistant Administrator[3] the authority to classify a fishery as Category II or III by considering other factors, or at his/her discretion.[4] Although, this statement is not included in regulations that address Category I ("frequent" incidental MSI), the Commission believes that the Assistant Administrator has similar discretion to classify a fishery as Category I in the absence of the data necessary to calculate MSI as a fraction of PBR.

The "current" average level of sperm whale MSI in the GoAK SLL fishery is 2.2 animals per year, based on an analysis of the most recent five years of data (2010-2014). NMFS states that it cannot determine that this level of MSI constitutes a "remote likelihood" of, or "no known" MSI, and therefore concludes that the fishery should not be classified as Category III. NMFS suggests instead that the current MSI level more reasonably represents an "occasional" rate of interaction. As justification of this conclusion, NMFS calculated that, for the current MSI not to exceed 10 percent of PBR (the upper threshold for Category III), the minimum population size (N_{min})[5] would have to be greater than 11,000 whales. An N_{min} less that 11,000 would mean that MSI would be greater than 10 percent of PBR, and therefore inconsistent with the regulatory definition of a Category III fishery. NMFS suggests that 11,000 individuals is an unreasonably high value for N_{min}, given that a recent analysis estimated the abundance of sperm whales in a large portion of the Gulf of Alaska ranged from 129 (2013) to 345 (2015) animals (Rone et al. 2017). The actual N_{min} is likely larger than the Rone et al. estimates because they were derived from surveys that did not cover the entire range of the stock within U.S. waters, but almost certainly less than 11,000 whales according to NMFS' reasoning. As such, the current MSI is almost certainly greater than 10 percent of PBR. The Commission agrees that this is an appropriate approach to classifying this fishery in the absence of an estimate of PBR, and that it should be classified as at least a Category II fishery.

Applying this same approach to the Category I threshold (50 percent of PBR), N_{min} would have to be greater than 2,200 animals for the current MSI not to exceed that threshold. Using the data from Rone et al. (2017), it would appear that 2,200 whales also is an unreasonably high estimate of N_{min} for this stock. Therefore, the GoAK SLL fishery logically could be classified as a Category I fishery. Exactly where MSI as a percentage of PBR falls relative to these thresholds will depend on a determination of what proportion of the stock's U.S. range was surveyed, and other factors not taken into account in NMFS's analysis.[6] Given the potentially high level of MSI relative to PBR, and the fact that the North Pacific stock of sperm whales is designated as a 'strategic' stock under the MMPA, the Commission recommends that if NMFS believes that the rate of MSI in the GoAK SLL fishery is a serious threat to North Pacific right whales, that it give high priority to 1) surveying enough of the range of sperm whales to provide a reliable estimate of PBR for the portion of the stock that occupies the EEZ in Alaska, 2) increasing observer coverage in the fishery (currently 14-

[3] NOAA's Assistant Administrator for Fisheries

[4] "In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is "occasional" [or "remote"] by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator."

[5] N_{min} is one of the components of the PBR formula

[6] E.g., application of a realistic g(0) in the abundance estimation performed in Rone et al. 2017, or whether the sperm whale density in the area surveyed is representative of the entire EEZ in Alaska

19 percent), and 3) developing a take-reduction plan. These actions will enable NMFS to more definitively classify the GoAK SLL fishery and to mitigate the bycatch problem.

Thank you for the opportunity to comment on the draft 2018 List of Fisheries. Please contact me if you have any questions about our recommendations or rationale.

Sincerely,

Rebecca J. Lent, Ph.D.,
Executive Director

References

Rone, B.K., A.N. Zerbini, A.B. Douglas, D.W. Weller, and P.J. Clapham. 2017. Abundance and distribution of cetaceans in the Gulf of Alaska. *Marine Biology* 164:23.