



MARINE MAMMAL COMMISSION

25 August 2023

Laura Engleby, Branch Chief
Protected Species Branch
Southeast Fisheries Region
NOAA Fisheries
St. Petersburg, Florida

Dear Ms. Engleby:

In light of concerns over increasing mortality and serious injury (MSI) estimates for the Western North Atlantic stock of short-finned pilot whales (SFPWs), which now exceeds the stock's potential biological removal (PBR) level, the Marine Mammal Commission (the Commission) is writing to recommend that NMFS reconvene the Pelagic Longline Take Reduction Team (PLTRT, or the Team).

On 6 June 2023, NMFS published a final rule amending the Pelagic Longline Take Reduction Plan (PLTRP or the Plan) (88 Fed. Reg. 36965). The amendment was based on recommendations developed by the PLTRT in 2014-2016 and later refined in 2019-2021. When the PLTRT met in March 2015, the draft 2015 SFPW stock assessment report (SAR) had been released and presented an estimated mean annual MSI¹ of 148 whales resulting from interactions with the Category I Atlantic Pelagic Longline Fishery. At that time, the stock's PBR was calculated as 159 whales. Although at that time, MSI was somewhat less than PBR, 1) MSI had been slightly greater than PBR in the 2013 SAR, 2) the stock was not approaching the Marine Mammal Protection Act's (MMPA) long-term zero mortality rate goal, 3) there was evidence that some of the PLTRPs measures were not performing as intended, and 4) the most recent data suggested that MSI would again exceed PBR in the 2016 SAR. Thus, NMFS and the Team felt it was important to consider additional bycatch mitigation measures for adoption by the fishery. As expected, when the draft 2016 SAR was released, the average MSI had increased to 192 whales, or 121 percent of PBR, thus giving NMFS and the Team added incentive to institute more effective mitigation. In subsequent SARs (2018-2019), due to the inclusion of new survey data with an increase in the estimated SFPW stock size, and therefore PBR, MSI was again estimated to be lower than PBR (58-71 percent of PBR).

However, the draft 2023 SAR presents a very different picture of SFPW bycatch. From 2016 to 2019, estimated mean MSI varied between 111 and 133 whales per year, but in 2020 and 2021 that rate jumped threefold to 371 and 355 whales per year, respectively. Thus, in the draft 2023 SAR, the average MSI for the most recent five years of data (2017-2021) is 218 individuals per year. In addition, a new, lower population estimate was reported in the draft 2023 SAR, which caused the PBR to drop from 236 to 143 whales. As a result, based on the latest available abundance and bycatch data, MSI is now 52 percent greater than PBR. Accordingly, the draft 2023 SAR proposes that the stock once again be designated as 'strategic' under the MMPA.

¹ Based on the most recent five years of available bycatch and effort data, 2009-2013.

The change from the 2021 SAR to the 2023 draft SAR for this stock is of concern as it indicates both that the population could have declined significantly and that MSI may have increased substantially. However, the draft 2022 SAR summarizes the abundance estimates from the last four population surveys, and despite the large decrease in the PBR reported in the draft 2022 SAR, NMFS's analysis found no evidence of a trend across the four survey estimates. NMFS does note, however, that the abundance estimate from the most recent survey provides the most reliable population size estimate. Thus, the PBR of 143 should be considered the best available value.

The large jump in MSI from 2019 to 2021 is not without precedent. Substantial changes in annual MSI have occurred in the past. For example, between 2010 and 2012, MSI jumped from 127 to 305, and then dropped to 170. Although, there have been relatively steep multi-year increases and decreases in mean MSI over the last two decades the general trend has been an increase that has averaged just over six pilot whales per year (Figure 1). From 2000-2011, MSI averaged 95 whales per year, while from 2011-2021 it averaged 203.

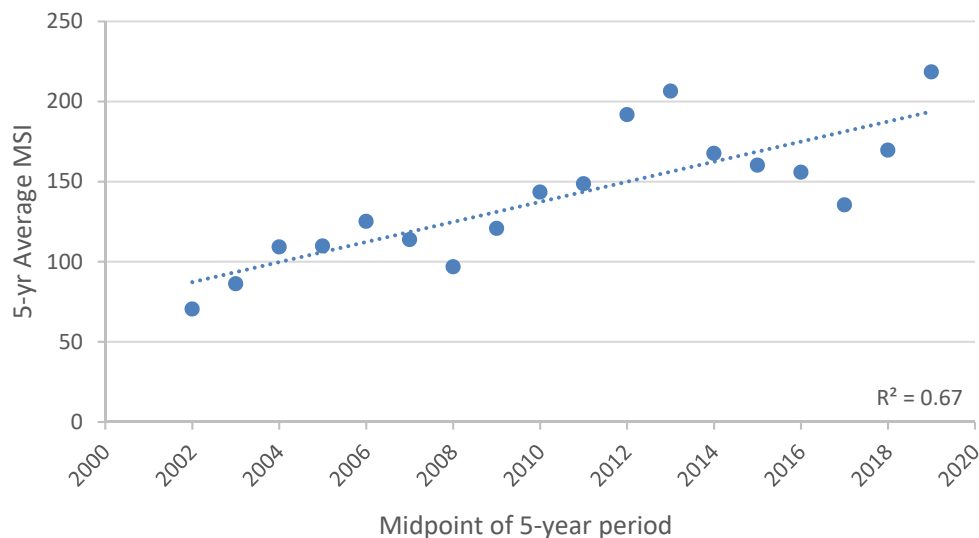


Figure 1. Trend in 5-year average SFPW MSI over the last two decades. Each point is plotted on the midpoint of its 5-year period; for example, the point plotted at 2002 is the mean of the annual MSI estimates from 2000 to 2004. Data were extracted from SFPW SARs from 2005-2023.²

This increase in MSI was not due to an increase in the size of the fishery. To the contrary, fishing effort has been decreasing since at least 2011 (Figure 2). Effort, as defined by number of hooks set, has decreased from roughly 7.7 to 3.1 million hooks set per year since 2011. This represents an increase in vulnerability of short-finned pilot whales to MSI in the pelagic longline fishery, in other words the total bycatch (number of pilot whales) and the bycatch-per-unit-effort (BPUE) have increased in the last two decades, and especially so in the last two years.

² <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock#cetaceans---small-whales>; Five-year means for years in which a SFPW SAR was not published were calculated from single-year MSI values reported in subsequent SARs.

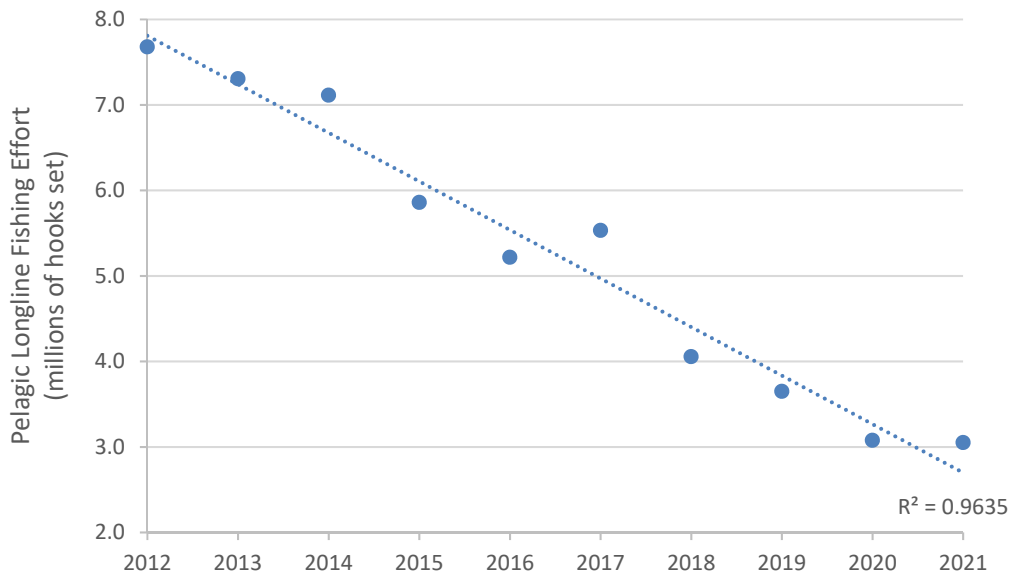


Figure 2. Trend in fishing effort, in millions of hooks set, over the last decade. Data extracted from Atlantic Highly Migratory Species Stock Assessment Fishery Evaluation (SAFE) reports.³

The recent final rule was premised on different circumstances, in which MSI was very close to PBR. As a result, its mitigation measures are inadequate to address a situation in which increasing BPUE and total bycatch has led to MSI being substantially greater than PBR. Therefore, the Commission recommends that NMFS promptly reconvene the Atlantic Pelagic Longline Take Reduction Team to develop additional and/or modified mitigation measures that will reduce MSI to a level less than PBR, as required by the MMPA.⁴

The Commission is aware that section 118(f)(3) gives NMFS the discretion to delay the development, or in this case the amendment, and implementation of a take reduction plan if funding is insufficient. The Commission notes that, historically, once NMFS has made the decision to develop and implement a TRP, it subsequently continues to fund that process at least as long as the section 118 immediate goal is not being met, and the Commission expects that such a practice will continue in this case. The Commission is aware that the convening (or reconvening, in this case) of a TRT is required within 60 days following the release of a final, not draft, SAR designating a stock as ‘strategic’. The Commission is also aware of several instances in which NMFS and take reduction teams have made decisions based on information in draft SARs. Further, because NMFS is well behind in releasing the final 2023 SARs, it should act on the information in the draft SAR. Given the significant increase in MSI in this fishery, the Commission recommends that NMFS make the

³ <https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-highly-migratory-species-stock-assessment-and-fisheries-evaluation-reports>

⁴ Section 117(f)(1) of the MMPA requires that NMFS “shall develop and implement a take reduction plan” for each strategic stock which interacts with a Category I or II fishery stock, and section 117(f)(2) establishes that the immediate goal of a take reduction plan is to reduce MSI “to levels less than” PBR within six months. Because section 117(f)(7)(F) states that NMFS “shall amend [a] take reduction plan and implementing regulations as necessary to meet the requirements of this section, *in accordance with the procedures in this section for the issuance of such plans and regulations*” (emphasis added), 117(f)(1) applies also to the amendment of a take reduction plan.

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amendment of the PLTRP a high priority, and promptly reconvene the PLTRT. The Commission understands that NMFS may prefer to allow the time necessary to determine if the new measures will reduce MSI to below PBR. However, that could take several years, during which the population may continue to suffer an unsustainable, high level of MSI. And further, as discussed above, there is no basis to expect that the new measures will be sufficient to achieve the requisite reduction in MSI.

The Commission appreciates NMFS's attention to this matter. Please contact me if you have questions.

Regards,



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Executive Director

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