



# MARINE MAMMAL COMMISSION

9 November 2012

The Honorable Jane Lubchenco, Ph.D.  
Undersecretary and Administrator  
National Oceanic and Atmospheric Administration  
U.S. Department of Commerce  
1401 Constitution Avenue, NW, Rm. 5128  
Washington, D.C. 20230

Dear Dr. Lubchenco:

By now, you likely have been briefed on a recent, controversial decision by the National Marine Fisheries Service to postpone gillnet closures scheduled to go into effect this fall in certain New England fisheries. The closures were intended to protect harbor porpoises. The Commission is seriously concerned about the decision, the manner in which it was made, and its ramifications for harbor porpoises specifically and the take reduction team process generally.

Since the decision, the Commission has been copied on, or received from others, strong statements outlining the problems with the Service's management of the harbor porpoise issue. Collectively, that information indicates at least three major failings. The first, and perhaps most fundamental, is a breach of faith in the take reduction process and the trust that underlies it. The take reduction process outlined in the Marine Mammal Protection Act uses a multi-party approach to avoid excessive fishery takes. It is intended to be science-based, but it also brings to the table otherwise opposing factions to draw what information they can from the best available science and then devise consensus solutions to bycatch problems. It gets its strength from, and depends on, the knowledge, experience, and trust of team members willing to work together. In this case, the Service effectively bypassed that approach, dismissing the collective will of the team members, and acting without the full benefit of a process designed to review, consider, and weigh the best information. Unfortunately, this example could have serious downstream effects on other take reduction teams, which include some of the same members and require that participants commit to, and place their trust in, the same consensus-building approach. The Commission hopes that the Service will do everything it can to avoid such downstream effects. The take reduction process is far from perfect, but it is still one of the most important tools our nation has for addressing the largest direct source of human-related marine mammal mortality.

The second problem highlighted by this controversial decision is the Service's longstanding failure to manage the involved gillnet fisheries effectively. Importantly, the failure is not from a lack of information or a means for reducing the take of harbor porpoises. The available information suggests that, since 1990, on the order of 16,000 harbor porpoises have become entangled and drowned. Most of those deaths could have been avoided had the Service required and enforced the full use of an off-the-shelf solution—pingers. Pingers have been tested in New England waters and other coastal regions and are known to reduce bycatch substantially. The available evidence indicates that the fishermen are not using them as required and the Service is not enforcing this requirement. If this is the case, then how can any of us reconcile these unnecessary deaths with our nation's

Jane Lubchenco, Ph.D.  
9 November 2012  
Page 2

professed new vision of more enlightened ocean management and conservation. In this case, the evidence and that vision simply do not match.

The third problem highlighted by this decision is the neglect of due scientific process. In particular, the rushed, last minute analyses of potential affects bypassed the critical scientific element of review. What do the data really show about the potential effects? On what basis can outsiders be confident in last minute analyses that they have not been able to review? Were data used selectively? How will the fishery participants adjust their fishing patterns if the closures are postponed, and what will be the consequences of those adjustments? These and other legitimate questions have been raised but not answered. They deserve an answer and should have been addressed before the subject postponement, especially if we, collectively, seek to promote and use the best available science.

For all these reasons, the Commission believes that this turn of events warrants an independent review. The Commission hopes that you will agree with the need to clarify what happened in this case, what its implications are for the take reduction process, and what corrections are necessary to avoid such situations in the future.

Finally, the Commission requested an opportunity to meet with you on November 15 to discuss this matter and has not yet received a response. Please let us know if such a meeting is possible so that we can plan accordingly.

Sincerely,

A handwritten signature in blue ink that reads "Timothy J. Ragen". The signature is written in a cursive style with a long horizontal stroke at the end.

Timothy J. Ragen, Ph.D.  
Executive Director

Cc: The Honorable Senator John F. Kerry  
The Honorable Senator Scott P. Brown  
The Honorable Senator Jeanne Shaheen  
The Honorable Senator Kelly Ayotte  
The Honorable Senator Olympia J. Snowe  
The Honorable Senator Susan M. Collins  
The Honorable Representative Barney Frank  
The Honorable Representative John F. Tierney  
The Honorable Representative William R. Keating  
The Honorable Representative Frank Guinta  
The Honorable Representative Chellie Pingree  
The Honorable Representative Mike Michaud  
Sam Rauch, Deputy Assistant Administrator for NOAA Fisheries