



# MARINE MAMMAL COMMISSION

28 July 2011

Howard Braham, Ph.D.  
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. Braham:

The Marine Mammal Commission, in consultation with its Committee of Scientific Advisors on Marine Mammals, has reviewed the notice of proposed rulemaking regarding the List of Fisheries for 2012 (76 Fed. Reg. 37716). The Commission concurs in general with the proposed changes for 2012, and it provides the following recommendations for your consideration.

## RECOMMENDATIONS

Based on its review of the draft List of Fisheries for 2012, the Marine Mammal Commission—

- concurs with the National Marine Fisheries Service's proposal to elevate the California/Oregon thresher shark/swordfish drift gillnet fishery to Category II and its proposal to designate the California/Oregon/Washington stock of humpback whales as the basis for that categorization;
- concurs with the National Marine Fisheries Service's proposal to elevate the Hawaii charter vessel and Hawaii trolling, rod and reel fisheries from Category III to Category II and its proposal to designate the Hawaii stock of pantropical spotted dolphins as the basis for those categorizations;
- concurs with the National Marine Fisheries Service's proposal to elevate the Southeastern Atlantic, Gulf of Mexico stone crab trap/pot fishery from Category III to Category II, based on analogy to the blue crab trap/pot fishery and on the likelihood of occasional interactions with bottlenose dolphins;
- concurs with the National Marine Fisheries Service's proposal to list bottlenose dolphins (Northern North Carolina estuarine system stock) as a stock subject to incidental killing or serious injury in the Virginia pound net fishery and recommends that the Service work with the State of Virginia to develop a formal, scientifically sound system for observing or otherwise monitoring marine mammal interactions in this fishery;
- concurs with the Service's proposal to add Gulf of Mexico bay, sound, and estuarine stocks of bottlenose dolphins to the list of marine mammals killed or injured in the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery;
- recommends that the National Marine Fisheries Service elevate the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery to Category II;
- concurs with the National Marine Fisheries Service's proposal to add the Western North Atlantic stock of Risso's dolphins to the list of stocks incidentally killed or seriously injured in the Mid-Atlantic bottom trawl fishery and recommends that the Service further investigate

- any factors that may account for the notable recent increase in takes of Risso's dolphins in this fishery;
- concurs with the National Marine Fisheries Service's proposal to add several marine mammal stocks, absent information on stock identity and fisheries interactions, to the list of those subject to incidental killing or serious injury in the Category I Western Pacific pelagic fishery, Hawaii deep-set component and the Category II Western Pacific pelagic fishery, Hawaii shallow-set component; and
- recommends that the National Marine Fisheries Service work with its international and industry partners to compile and analyze information about marine mammals on the high seas and their interactions with fisheries, so that the list of species incidentally killed or seriously injured in high seas fisheries can be refined in the near future.

The Marine Mammal Commission has also reviewed its recommendations from previous years for the proposed List of Fisheries for 2012, and the Marine Mammal Commission—

- recommends that the National Marine Fisheries Service work with the Commission to develop an effective long-term strategy, based on analysis of the limiting factors, needed resources, and alternative courses of action, for determining marine mammal stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates in the Gulf of Mexico; and
- recommends that the National Marine Fisheries Service work on its own and in collaboration with states to develop new, consistent methods for estimating fishing effort; and
- commends the National Marine Fisheries Service for its efforts to centralize information used to classify Category III fisheries, including observer coverage and other fishery characteristics, and looks forward to seeing this effort come to fruition.

## **RATIONALE**

### **California/Oregon thresher shark/swordfish drift gillnet**

The Service proposes to elevate the California/Oregon thresher shark/swordfish drift gillnet fishery from Category III to Category II based on the reported take of one humpback whale in 2009. The Service received the report from a fisherman through the Marine Mammal Authorization Program, and it determined that the whale had been seriously injured. Based on the location of the entanglement, the whale was most likely from the California/Oregon/Washington stock, which has a potential biological removal level of 11.3. The average annual mortality and serious injury rate, based on this single injury, is 0.2 humpback whales per year, which is 1.8 percent of the stock's potential biological removal level. Thus, the fishery meets the criteria for a Category II listing. The Marine Mammal Commission therefore concurs with the National Marine Fisheries Service's proposal to elevate the California/Oregon thresher shark/swordfish drift gillnet fishery to Category II and its proposal to designate the California/Oregon/Washington stock of humpback whales as the basis for that categorization.

### **Hawaii charter vessel and Hawaii trolling, rod and reel**

The Service proposes to elevate the Hawaii charter vessel and Hawaii trolling, rod and reel fisheries from category III to Category II based on the strong likelihood of occasional interactions with the Hawaii stock of pantropical spotted dolphins. The Service reports that these charter and commercial trolling vessels frequently troll multiple lines through schools of spotted dolphins to catch tuna that aggregate below them. The Service cites anecdotal reports from fishermen and scientists that spotted dolphins occasionally take lures or bait and sometimes become hooked in the mouth or on the body. Although quantitative information on mortality and serious injury rates are not available for these fisheries, the Service evaluated other factors, including fishing techniques, gear used, target species, effort levels, and anecdotal and eyewitnesses' observations, to determine the likelihood of interactions. The Service concluded that each of these fisheries (which have 2,305 vessels combined) is likely to result in at least one death or serious injury of a spotted dolphin annually. Given potential biological removal level of 61 for the Hawaii stock of pantropical spotted dolphins, one take each year in each fishery would represent 1.6 percent of this potential biological removal level. Therefore, until other quantitative data on marine mammal takes are available from onboard observer or other programs, the Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to elevate the Hawaii charter vessel and Hawaii trolling, rod and reel fisheries from Category III to Category II and its proposal to designate the Hawaii stock of pantropical spotted dolphins as the basis for those categorizations.

### **Southeastern Atlantic, Gulf of Mexico stone crab trap/pot**

The Service proposes to elevate the Southeastern Atlantic, Gulf of Mexico stone crab trap/pot fishery from Category III to Category II, based on analogy to the Category II Atlantic blue crab trap/pot fishery as well as on bottlenose dolphin mortality and serious injury rates noted in stranding reports. The Service describes many similarities between the two fisheries, including fishing techniques, habitat, and gear used. Also, the stone crab trap/pot fishery coincides in space and time with bottlenose dolphin strandings, in which the animals often bear evidence of fisheries interactions. Between 2002 and 2010, the Service reported 10 bottlenose dolphin strandings (three confirmed from the stone crab trap/pot fishery and seven plausibly from the stone crab trap/pot fishery). These strandings involve multiple bottlenose dolphin stocks, and the Service reports that the stranding data suggest that this fishery interacts with six strategic stocks and one non-strategic stock of bottlenose dolphins. Unfortunately, the Service has published potential biological removal levels for only two of these seven stocks, and it does not identify the stock for each of the 10 stranded animals; therefore, a quantitative analysis of categorization is not possible. Nevertheless, given the nature and limitations of the existing information, as a precautionary measure, the Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to elevate the Southeastern Atlantic, Gulf of Mexico stone crab trap/pot fishery from Category III to Category II, based on analogy to the blue crab trap/pot fishery and on the likelihood of occasional interactions with bottlenose dolphins.

### **Virginia pound net**

The Service proposes to add bottlenose dolphins (Northern North Carolina estuarine system stock) to the list of species or stocks incidentally killed or seriously injured in the Category II Virginia pound net fishery. Stranding data suggest that, between 2004 and 2008, 17 animals from this stock were killed in pound net gear (most likely from this fishery) and three were released alive. The addition of this stock to the list of species/stocks affected appears to be well justified. It also points to the need for a formal onboard observer program or some other means of obtaining reports of interactions. Therefore, the Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to list bottlenose dolphins (Northern North Carolina estuarine system stock) as a stock subject to incidental killing or serious injury in the Virginia pound net fishery and recommends that the Service work with the State of Virginia to develop a formal, scientifically sound system for observing or otherwise monitoring marine mammal interactions in this fishery.

### **Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel**

The Service proposes to add bottlenose dolphins (Gulf of Mexico bay, sound, and estuarine stock) to the list of species or stocks incidentally killed or injured in the Category III Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery, based on evidence of gear interactions from stranded animals. Between 2002 and 2009, the Service reported eight stranded bottlenose dolphins with confirmed hook and line gear (two of which were released alive), one dead bottlenose dolphin entangled in suspected recreational fishing gear, and 29 additional stranded bottlenose dolphins entangled in gear consistent with recreational hook and line gear. The Marine Mammal Commission concurs with the Service's proposal to add Gulf of Mexico bay, sound, and estuarine stocks of bottlenose dolphins to the list of marine mammals killed or injured in the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery. At the same time, the Commission notes that at least 38 dolphins were taken between 2002 and 2008. Even without a quantitative analysis of average annual mortality and serious injury or comparisons with potential biological removal levels, the Service has sufficient evidence to conclude that the fishery results in at least occasional takes and warrants a Category II listing. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service elevate the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery to Category II.

### **Mid-Atlantic bottom trawl**

The Service proposes to add the Risso's dolphin (Western North Atlantic stock) as a species or stock incidentally killed or seriously injured in the Category II Mid-Atlantic bottom trawl fishery. The Service describes how 15 Risso's dolphins were observed killed in this fishery in 2010, which is noteworthy because although fishery-related mortality for this stock between 2004 and 2008 averaged 20 deaths or serious injuries per year, no deaths in this specific fishery were reported during that 5-year period. The Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to add the Western North Atlantic stock of Risso's dolphins to the list of stocks incidentally killed or seriously injured in the Mid-Atlantic bottom trawl fishery and

recommends that the Service further investigate any factors that may account for the notable recent increase in takes of Risso's dolphins in this fishery.

### **Western Pacific pelagic, Hawaii deep-set component and Western Pacific pelagic, Hawaii shallow-set component**

The Service proposes to add Blainville's beaked whales (unknown stock), bottlenose dolphins (unknown stock), pantropical spotted dolphins (unknown stock), Risso's dolphins (unknown stock), short-finned pilot whales (unknown stock), and striped dolphins (unknown stock) to the list of species or stocks subject to incidental killing or serious injury in the Category I Western Pacific pelagic fishery, Hawaii deep-set component. The Service also proposes to add bottlenose dolphins (unknown stock), Bryde's whales (unknown stock), *Kogia* spp. (unknown stock), Risso's dolphins (unknown stock), and striped dolphins (unknown stock) to the list of species or stocks subject to incidental killing or serious injury in the Category II Western Pacific pelagic fishery, Hawaii shallow-set component. The Service's proposals are not based on additional observed takes. Instead, the Service is acknowledging the great uncertainty involved in identifying species and stocks taken in these fisheries outside the U.S. Exclusive Economic Zone. That uncertainty is due, in part, to the fact that boundaries for many stocks outside the zone are unknown. The proposed additions to the list better reflect the state of information and need for caution in managing interactions between marine mammals and these high seas fisheries. The Marine Mammal Commission concurs with the National Marine Fisheries Service's proposal to add several marine mammal stocks, absent information on stock identity and fisheries interactions, to the list of those subject to incidental killing or serious injury in the Category I Western Pacific pelagic fishery, Hawaii deep-set component and the Category II Western Pacific pelagic fishery, Hawaii shallow-set component. Such additions point to the need to work with industry and increase investment and initiatives to gather more information about high seas marine mammal stocks, including their boundaries and interactions with fisheries. The Marine Mammal Commission also recommends that the National Marine Fisheries Service work with its international and industry partners to compile and analyze information about marine mammals on the high seas and their interactions with fisheries, so that the list of species incidentally killed or seriously injured in high seas fisheries can be refined in the near future.

### **Reiteration of Previous Recommendations**

In commenting on the proposed List of Fisheries in several recent years, the Commission has expressed ongoing concern about the lack of information on many species and stocks of marine mammals in the Gulf of Mexico, with emphasis on bottlenose dolphins. Specifically, it has noted the dearth of information about stock structure, abundance, potential biological removal levels, and rates of interaction with different fisheries. The inadequacy of such information constrains the Service's ability to characterize marine mammal and fisheries interactions and to manage the fisheries so that takes of marine mammal are reduced. Once again, in the proposed 2012 List of Fisheries, the Service has needed to make assumptions about which stocks are affected by which fisheries (e.g., by the Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fisheries and the Southeast U.S. Atlantic, Gulf of Mexico and Caribbean snapper-grouper and other reef fish bottom longline-hook and line fishery), how often takes occur, and how significant the takes are for the

affected stocks. Although the Commission supports the assumptions made and precautionary measures taken to date, it notes that managing by assumption is not a sound long-term conservation strategy, especially when the assumptions are likely to have significant social and economic impacts. The Commission also notes how the insufficiency of information about marine mammals limits the nation's ability both to understand the relative impacts of threats to marine mammals other than fishery interactions—such as oil spills, exposure to toxic materials in dispersants and other industrial sources, toxic algae, and hypoxia—and to mount appropriate response, restoration, and conservation activities.

In responding to the Commission's past recommendations, the Service has consistently stated that collection of information about fishery interactions is a high priority and will occur if resources become available. The Service also has emphasized the value of information gathered via fishermen self-reports and stranding networks. In its response to the Commission's letter on the proposed 2011 List of Fisheries, the Service noted how, as a result of the BP/Deepwater Horizon MC252 oil spill response and restoration efforts, additional surveys and mark-recapture studies were underway for some bay, sound, and estuarine stocks, and that this work would provide updated abundance estimates and potential biological removal levels for some stocks. The Commission appreciates the Service's expressed intention to expand its efforts and investments in these areas. However, the Commission also believes that these efforts and investments would benefit from a more comprehensive, aggressive, and innovative strategy. Therefore, the Marine Mammal Commission recommends that the National Marine Fisheries Service work with the Commission to develop an effective long-term strategy, based on analysis of the limiting factors, needed resources, and alternative courses of action, for determining marine mammal stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates in the Gulf of Mexico.

The Commission notes that the Service proposes to update its reports on the numbers of vessels/persons for several Southeast Atlantic, Mid-Atlantic, and New England fisheries and the Service anticipates that, in many cases, the new numbers again represent increases or decreases of up to several thousand permit holders. The Commission understands, based on the Service's responses to previous recommendations on this issue, that the newly proposed numbers are intended to reflect potential effort (given that not all permitted fishermen fish), and that "a clear measure of effort for all state fisheries in the Northeast and Mid-Atlantic has not been determined due to the manner in which many state permits allow for the use of multiple gear types" (75 Fed. Reg. 68478). Although the Service has tried to reassure the Commission that these great fluctuations in vessel/person numbers have no management or observer implications, the Commission remains concerned about the uncertainty conveyed by these numbers. For example, if the number of active fishermen is only a fraction of the potential number, it remains unclear how many vessels actually engage in fishing. Put bluntly, fisheries managers, both state and federal, should have clear measures of effort for the fisheries they manage. To that end, the Marine Mammal Commission recommends that the National Marine Fisheries Service work on its own and in collaboration with states to develop new, consistent methods for estimating fishing effort.

Finally, the Commission acknowledges the National Marine Fisheries Service's efforts for summarizing and providing information about observer coverage and other characteristics of listed

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fisheries. In commenting on the proposed Lists of Fisheries for the past several years, the Commission has recommended that the Service include observer coverage for each fishery on the List of Fisheries, including Category III fisheries, to allow the reader to assess the adequacy of information on incidental mortality and serious injury to marine mammals. The Commission appreciates that the Service has considered our concerns and is exploring ways to fully and effectively convey the reasons for listing fisheries, which must be based on the best available information and may or may not include observer-derived data. In its response to the Commission's recommendation on this issue for the 2011 List of Fisheries, the Service noted that summarizing in one location the information used to classify Category III fisheries (similar to the centralized information about Category I and II fisheries) could be useful to the reader, and that it would consider how to best provide this information while it develops the 2012 List of Fisheries. The Marine Mammal Commission commends the National Marine Fisheries Service for its efforts to centralize information used to classify Category III fisheries, including observer coverage and other fishery characteristics, and looks forward to seeing this effort come to fruition.

Please let me know if you have any questions regarding the Commission's recommendations or rationale.

Sincerely,



Timothy J. Ragen, PhD  
Executive Director