

MARINE MAMMAL COMMISSION
4340 East-West Highway, Room 700
Bethesda, MD 20814-4447

12 August 2008

Mr. David Cottingham
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 Mr. Cottingham:

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 2009 (73 Fed. Reg. 33760). The Commission offers the following recommendations and comments.

RECOMMENDATIONS

Based on its review of the proposed 2009 List of Fisheries, the Marine Mammal Commission—

- concurs with the National Marine Fisheries Service's decision to describe and evaluate high-seas fisheries and include them in the List of Fisheries;
- recommends that the Service develop and implement the research and monitoring programs needed to manage high-seas fisheries in a manner consistent with the requirements of the Marine Mammal Protection Act;
- concurs with the Service's proposal to split and reclassify the category I Hawaii-based longline fishery into category II shallow-set and category I deep-set fisheries;
- concurs with the Service's proposal to reclassify the California halibut/white sea bass set net fishery from category I to category II;
- recommends that the Service reclassify all currently recognized West Coast trap and pot fisheries as category II until additional information is available to implicate a specific fishery as exceeding 50 percent of a stock's potential biological removal (PBR) level (which would warrant a category I classification) or to exonerate a fishery that does not operate in areas where and when humpback whales are present;
- reiterates previous recommendations that the Service (1) expedite its investigation of bottlenose dolphin stock structure in the Gulf of Mexico, (2) expand its efforts to collect reliable information on serious injury and mortality rates of marine mammals incidental to Gulf of Mexico fisheries, and (3) reevaluate the classification of Gulf of Mexico fisheries as information becomes available; and
- reiterates a previous recommendation that the Service describe the level of observer coverage for each fishery as part of the List of Fisheries.

RATIONALE

High-Seas Fisheries

The Marine Mammal Commission concurs with the National Marine Fisheries Service's decision to describe and evaluate high-seas fisheries and include them in the proposed List of Fisheries. Doing so makes the List of Fisheries more nearly complete and more consistent with the scope of the Marine Mammal Protection Act. The descriptions and evaluations of high-seas fisheries highlight the lack of data on both the status and the incidental take of marine mammals outside of the U.S. Exclusive Economic Zone (EEZ). This lack of data is not surprising because current U.S. marine mammal stock assessment programs are focused on the stock structure, abundance, and incidental take of marine mammals within the U.S. EEZ. As a result, information on status and incidental take of marine mammals in foreign and international fisheries often is not available. To address this need, the Marine Mammal Commission recommends that the Service develop and implement the research and monitoring programs needed to manage high-seas fisheries in a manner consistent with the requirements of the Marine Mammal Protection Act. Such approaches likely will require novel stock assessment techniques and development of international partnerships. Gathering data to support management of high-seas fisheries will be a difficult task but also will provide many ancillary benefits, including the development of useful tools for managing transboundary stocks.

Pacific Fisheries

The Marine Mammal Commission also concurs with the Service's proposal to split and reclassify the category I Hawaii-based longline fishery into category II shallow-set and category I deep-set fisheries. Separation of these two fisheries is warranted based on their different geographic operating areas, target species, operating platforms, management regimes, and apparent marine mammal interaction rates. The reclassification of the shallow-set fishery also is warranted based on the lack of information regarding population structure and abundance of marine mammals that the fishery interacts with outside the U.S. EEZ. As stated in the proposed List of Fisheries, category II is the appropriate category for new fisheries for which the Service does not have adequate information to accurately categorize the fishery. The Service apparently based the proposed reclassification on observed interaction rates, noting that since 2004 the shallow-set fishery has had 100 percent observer coverage and the observed interaction rates do not exceed 50 percent of the potential biological removal level for stocks within the U.S. EEZ. However, the potential biological removal level is unknown for stocks that occur outside the U.S. EEZ and are taken incidentally by the fishery. Without information on the potential biological removal level for these stocks, the Service cannot accurately categorize the fishery.

The Marine Mammal Commission also concurs with the Service's proposal to reclassify the California halibut/white sea bass set net fishery from category I to category II. The ban on gillnetting in central California in 2002 eliminated the bycatch of harbor porpoises in Monterey Bay and Morro Bay, and the rates of serious injury and mortality of California sea lions and harbor seals incidental to the fishery do not exceed 50 percent of the potential biological removal levels for those stocks.

West Coast Trap and Pot Fisheries

In its letter commenting on the 2007 proposed List of Fisheries, the Commission expressed concern regarding fisheries interactions associated with trap and pot gear. In its response to those comments, the Service summarized its support of research efforts as well as outreach efforts to encourage voluntary reductions in the amount of potentially entangling gear. The Service also indicated that it intended to review West Coast trap and pot fisheries, which it has done in the 2009 proposed List of Fisheries. Although the Commission appreciates the Service's efforts to evaluate information on observed humpback whale entanglements and to attribute those entanglements to specific pot or trap fisheries, the Commission believes that the analysis and resulting proposed reclassifications do not account appropriately for the substantial uncertainty in the number and location of entanglements. That uncertainty, if misinterpreted, may lead to inaccurate conclusions about the appropriate category for certain trap and pot fisheries. The uncertainty also pertains to the species involved as other endangered species are susceptible to entanglement. The Service's analysis focused on humpback whales—with cursory consideration of gray whales—but future analyses should evaluate entanglement rates of other endangered whales that could become entangled in a trap or pot fishery without being observed.

The vast majority (90 to 97 percent) of humpback whale entanglements are not observed (Robbins and Matilla 2001, 2004), and, by implication, at least some entanglements of other endangered baleen whales are not observed and reported. The Service recognizes this fact and cautions that the estimate of seriously injured or killed whales should be considered a minimum. However, the number of fisheries identified as interacting with whales also is a minimum estimate because whales that become entangled in gear from a specific trap or pot fishery may never be observed. The Service notes that "...other pot and trap fisheries may overlap in space and time with humpback whales feeding or migrating along the West Coast, but in the absence of evidence of interactions, NMFS cannot justify placing these fisheries in category II at this time." The Commission believes that this statement misplaces the burden of proof and removes the incentive for collecting important information on entanglement rates. The Service recognizes that even "[a] single serious injury or mortality of a humpback whale in a trap/pot fishery results in a level of take of 0.2 animals per year, or 8 percent of the PBR (PBR=2.5 animals), which is consistent with a Category II categorization." The Service has shown that humpback whales do become entangled in trap/pot fishing gear along the West Coast, and there is no evidence to suggest that whales are more or less likely to become entangled in gear from any specific trap/pot fishery. Similar reasoning would apply to North Pacific right, blue, fin, and sei whales. Given that the majority of entanglements are not observed, it is reasonable to classify all West Coast trap/pot fisheries as category II based on their similarity to those trap/pot fisheries that are known to have incidentally entangled whales. As noted above, the Service acknowledges that "Category II is also the appropriate category for fisheries for which reliable information on the frequency of marine mammal serious injury or mortalities is lacking." Therefore, the Marine Mammal Commission recommends that the Service reclassify all currently recognized West Coast trap and pot fisheries as category II until additional information is available to implicate a specific fishery as exceeding 50

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percent of a stock's potential biological removal level (which would warrant a category I classification) or to exonerate a fishery that does not operate in areas where and during times that humpback whales are present. Subdividing and renaming the currently recognized West Coast trap fisheries based on observed entanglement rates in component fisheries is not appropriate given the limited fraction of entanglements that are observed.

Reiteration of Previous Recommendations

In previous letters reviewing the 2003 through 2008 Lists of Fisheries, the Commission expressed concerns about marine mammal interactions with Gulf of Mexico fisheries, particularly the blue crab trap/pot fishery and the menhaden purse seine fishery. The Commission recommended that the Service expedite its investigation of bottlenose dolphin stock structure and reevaluate the classification of Gulf of Mexico fisheries. The Commission further recommended 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 being given to instituting an observer program for the menhaden purse seine fishery and expanding efforts to evaluate bottlenose dolphin entanglement in blue crab trap/pot gear. The Service has initiated efforts to address some of these issues and 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. Nonetheless, the Marine Mammal Commission reiterates its previous recommendations because it remains concerned about marine mammal interactions with Gulf of Mexico fisheries and believes that more active management is needed in this region.

Consistent with its recommendations regarding the 2005 to 2008 Lists of Fisheries, the Marine Mammal Commission again recommends that the Service describe the level of observer coverage for each fishery as part of the List of Fisheries. The Service indicated in its response to comments on the draft 2008 List of Fisheries that it "feels that it will be of limited use to include observer coverage data or percentages in the LOF without also including the confidence associated with mortality/serious injury estimates generated from the observer data." The Commission would welcome the inclusion of information on mortality and serious injury estimates within the List of Fisheries. In fact, the Commission recommended that such information be included within the List of Fisheries in comments on the 2005 List of Fisheries. That said, the Commission continues to believe observer coverage information is important in itself, particularly for evaluating cases where no marine mammal interactions are reported. Fisheries without recorded interactions are not reported in the stock assessment reports, and, without information on observer coverage, it is impossible to determine whether a given fishery was adequately observed and no marine mammals were taken or the fishery was not adequately observed and mortality and serious injury may have occurred but were not documented.

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

Sincerely,



Timothy J. Ragen, Ph.D.
Executive Director

Literature Cited:

- Robbins, J., and D. Matilla. 2001. Monitoring entanglements of humpback whales (*Megaptera novaeangliae*) in the Gulf of Maine on the basis of caudal peduncle scarring. Report to the 53rd Scientific Committee Meeting of the International Whaling Commission, SC/53/NAH25.
- Robbins, J., and D. Matilla. 2004. Estimating humpback whale (*Megaptera novaeangliae*) entanglement rates on the basis of scar evidence. Report to the Northeast Fisheries Science Center, National Marine Fisheries Service, Order Number 43EANF030121.