

MARINE MAMMAL COMMISSION
4340 EAST-WEST HIGHWAY, ROOM 905
BETHESDA, MD 20814

10 February 2003

Ms. Donna Wieting
Chief, Marine Mammal Conservation Division
Office of Protected Resources
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910

Dear Ms. Wieting:

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 2003 (*Federal Register* 68:1414). We offer the following comments and recommendations.

Publication of the proposed list provides the Service an opportunity to inform and seek comments from the public regarding the categorical ranking of each fishery and the appropriateness of each ranking. Ranking is determined by the frequency of mortality and serious injury of marine mammals occurring during the course of a fishery. The appropriateness of each ranking is best judged from the available information on marine mammal/fishery interactions and the manner in which that information is used to estimate the number of mortalities and serious injuries. The notice of proposed rulemaking identifies stock assessment reports as the primary source of the information used to rank each fishery, but the manner in which that information is used is not clear. Mortality and serious injury estimates for a fishery may be outdated or unreliable if the fishery has not been observed in recent years or observer coverage was low. In addition, some fisheries that could reasonably be expected to take marine mammals have not yet been observed. The public would be more informed and more able to comment meaningfully on the proposed list of fisheries if the basis for estimating mortality and serious injury levels was described, at least for fisheries where the level of take is uncertain but may be significant. For that reason, the Marine Mammal Commission recommends that in the proposed list of fisheries the Service describe the information upon which rankings are based.

Alaska Bering Sea Aleutian Islands Groundfish Trawl Fishery

The Service indicates that the Alaska Bering Sea Aleutian Islands groundfish trawl fishery warrants a Category I ranking because of the potential level of associated mortality and serious injury

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of western North Pacific humpback whales. Nevertheless, the Service proposes to classify this fishery as Category II, because (1) the minimum population estimate is likely an underestimate; (2) the origins of the whales (central versus western North Pacific stock) cannot be reliably determined; (3) the mortality estimate is based on data through 1999, and (4) preliminary data from 2000 indicate the mortality level will decrease to below 50% of the potential biological removal level. These reasons suggest uncertainty about the available information but do not necessarily indicate that Category II is more appropriate. In the face of such uncertainty and in view of the low numbers in this stock, placement in Category I seems more appropriate. However, whether the fishery is placed in Category I or Category II, a review of monitoring methods seems warranted and necessary to ensure that all reasonable measures are being taken to accurately assess the level of mortality and serious injury and thereby provide a basis for appropriate protective measures. For example, the Service noted that observer coverage for this fishery was 53 to 76 percent annually from 1990 to 2000. However, the trawl fisheries in this region target a large number of fish species (e.g., pollock, Atka mackerel, Pacific cod, rockfish, flatfish, sablefish). These fisheries vary considerably in geographic and temporal distribution and the habitat in which they occur. Thus, the distribution of observer effort among these fisheries may be important for reliably determining the actual level of mortality and serious injury. It is not clear that observer effort is appropriately distributed to detect humpback whale entanglements.

When developing the formula, Service scientists sought to identify a level of mortality and serious injury that would allow a population to achieve its optimum sustainable population with a 95% probability over 100 years or remain at its optimum sustainable population level for 20 years with a 95% probability. The minimum population estimate for the western North Pacific stock of humpback whales was determined using the Service's accepted formula (Caretta et al. 2001; Wade and Angliss 1997). By dismissing the minimum population estimate reported in the stock assessment reports, the Service appears to be ignoring its own policy, which is based on sound, peer-reviewed science. Therefore, the Marine Mammal Commission recommends that the Service review its categorization of this fishery, as well as the monitoring and management measures that are in place with respect to this stock to ensure that all reasonable management and conservation measures are being taken.

Alaska Cook Inlet Salmon Drift Gillnet Fishery

The Service proposes to reclassify the Alaska Cook Inlet salmon drift gillnet fishery from Category II to Category III. However, very little information is given to justify this decision. The Service notes that one serious injury of a harbor porpoise was observed and that this take constitutes less than one percent of the potential biological removal level for the affected stock. However, the determination of category is to be based on the estimated total take, not the number of takes observed. Without more information on observer coverage, it is not possible for the reader to determine if the two are the same. In addition, the Alaska salmon fisheries vary considerably from year to year in effort, distribution, and timing, and it is not clear that observations in 1999 and 2000 are reliable indicators for current and future take levels. The advanced notice specifically states that "[A]n analysis of all takes in this fishery from 1995-2000, relative to the classification criteria support [sic] a reclassification from Category III to Category II." Therefore, the Marine Mammal

Commission recommends that the Service provide more complete justification for classifying the Alaska Cook Inlet salmon drift gillnet fishery as Category III, and determine whether the level of observer coverage is adequate for this fishery.

Gulf of Mexico Blue Crab Trap/Pot Fishery

In 2001 the National Marine Fisheries Service proposed listing the Gulf of Mexico Blue Crab Trap/Pot Fishery as a Category II fishery based on evidence of fishery interactions from stranded bottlenose dolphins. The stranding data indicated that 0.8 dolphins per year were killed in crab traps/pots, thereby providing a minimum estimate of mortality and serious injury. In the 22 January 2001 *Federal Register* notice proposing the list of fisheries, the Service reported that this level of mortality was more than 1 percent and less than 50 percent of the potential biological removal level of the Gulf of Mexico bay, sound, and estuarine stocks, thus placing this fishery in Category II. However, in the final list of fisheries for 2001, the Gulf of Mexico Blue Crab Trap/Pot Fishery was listed as Category III with no explanation for the change from the proposed rule. In the 2003 proposed list of fisheries, the Service proposes leaving this fishery as Category III and re-evaluating the status next year, but provides no accompanying explanation or description of observer coverage, estimated take levels, or potential biological removal level. If the best available stranding data indicate a level of take corresponding to a Category II fishery, then the ranking of this fishery as Category III seems unjustified. The Marine Mammal Commission recommends that the Service review the evidence regarding the level of mortality and serious injury of bottlenose dolphins in this fishery, provide that information to the public, and categorize the fishery accordingly.

Gulf of Mexico Menhaden Purse Seine Fishery

The Gulf of Mexico Menhaden Purse Seine Fishery is currently listed as a Category II fishery. However, the 1999 stock assessment report for the Gulf of Mexico bay, sound, and estuarine stocks of bottlenose dolphins concludes that as many as 172 animals are taken and 57 are killed in this fishery. The stock assessment report is unclear as to whether this is an annual take or over the course of several years. In addition, observer coverage for the fishery is low and the estimates of take and mortality may be unreliable. Nonetheless, if this information is even reasonably accurate, then fishery-related mortality exceeds the potential biological removal level by a considerable amount. Because fisheries are categorized, in part, for the purpose of determining where better information is needed, the Marine Mammal Commission recommends that the Service designate the Gulf of Mexico Menhaden Purse Seine Fishery as a Category I fishery and institute an observer program to obtain more reliable information.

Alaska Crustacean Pot Fishery

Under "Fishery Name and Organizational Changes and Clarifications" the Service reports that the Alaska crustacean pot fishery takes humpback whales from the Central North Pacific stock. However, humpback whales do not appear on the list in association with this fishery. Such takes have become a matter of concern in southeast Alaska. One of the main objectives of categorizing fisheries in a higher category is to ensure collection of the information needed to determine the level

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of take and, if necessary, implement appropriate protective measures.

In addition, bowhead whales from the western Arctic stock are known to become entangled in crustacean pot lines, and this information is not included in the corresponding stock assessment report. Entanglement information is available from the North Slope Borough and the Marine Mammal Commission recommends that the available information be obtained and incorporated into the stock assessment reports and used to categorize this fishery.

As a final comment, we note that under "List of Species that are Incidentally Injured or Killed; AK Bering Sea Aleutian Islands Groundfish Trawl Fishery," the first paragraph refers to harbor seals and harbor porpoises, and it is not clear which is intended. In any case, the Commission agrees that takes from the Gulf of Alaska stock of either species are unlikely in the Bering Sea Aleutian Islands trawl fishery.

Please let me know if you have any questions or comments.

Sincerely,



David Cottingham
Executive Director

References:

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Wade, P.R. and R. Angliss. 1997. Guidelines for assessing marine mammal stocks: report of the GAMMs workshop April 3-5, 1996, Seattle, Washington. U.S. Department of Commerce, NOAA Tech. Memo. NMFS-OPR-12, 93 pp.