

TERMS OF REFERENCE

National Marine Fisheries Service's Serious Injury Technical Workshop Distinguishing Serious from Non-serious Injury: An Evaluation of Existing Guidelines and Exchange of New Information

September 2007

Background and Need

Under the Marine Mammal Protection Act (MMPA), the National Marine Fisheries Service (NMFS) must distinguish human-caused serious injuries from non-serious injuries to marine mammals. MMPA section 117 directs NMFS and the U.S. Fish and Wildlife Service to prepare stock assessment reports for all stocks of marine mammals that occur in waters under the jurisdiction of the United States. Among the types of information that must be included in each of these reports, the agencies must enumerate human-caused mortalities and serious injuries by source; however, the MMPA does not require non-serious injuries to be reported. Section 118 also states that a stock of marine mammals is to be labeled as a strategic stock if, among other things, human-caused mortality and serious injuries exceed the stock's Potential Biological Removal level.

MMPA section 118 is the regime to govern the taking of marine mammals incidental to commercial fishing operations. MMPA section 118(c) categorizes fisheries based upon the level of mortality and serious injury of marine mammals incidental to a fishery's operations. Additionally, MMPA section 118(b) requires mortality and serious injury of marine mammals to be reduced to insignificant levels approaching a zero mortality and serious injury rate. If incidental mortality and serious injury levels are above these levels, MMPA section 118(f) directs NMFS to develop a plan to reduce such incidental mortality and serious injury levels to specified goals.

As noted above, "serious injury" has scientific and regulatory meaning under the MMPA; however, the MMPA and its legislative history do not provide guidance on how severe an injury must be to be considered "serious". To implement MMPA sections 117 and 118, NMFS defined "serious injury" in regulations (50 CFR 229.2) as "any injury that will likely result in mortality." To promote national consistency in the interpretation of the regulatory definition, NMFS convened a workshop in April 1997 to discuss available information related to the impact of injuries to marine mammals incidental to commercial fishing operations.¹ These discussions were designed to result in a framework upon which NMFS could develop a consistent approach for determining which injuries should be considered serious injuries.

NMFS staff have used the information from the 1997 workshop in evaluating injury reports submitted by commercial fishers and fishery observers to determine which injuries could be considered serious injuries. Since 1997, additional information has been collected, and this new information may allow NMFS to re-evaluate whether a given injury would result in mortality. In

¹ Angliss, R.P., and D.P. DeMaster. 1998). Differentiating Serious and Non-serious Injury of Marine Mammals Taken Incidental to Commercial Fishing Operations: Report of the Serious Injury Workshop 1-2 April 1997, Silver Spring, Maryland. NOAA Technical Memorandum NMFS-OPR-13

addition, annual updates to the stock assessment reports required under MMPA section 117 indicate that injuries to marine mammals from vessel collisions are relatively common. Accordingly, the guidance for distinguishing between serious and non-serious injuries of marine mammals should be extended to include injuries sustained from vessel collisions (i.e., blunt and sharp force trauma) as well as those usually sustained from interactions with commercial fisheries (i.e., entanglement and hooking). Although there are other sources of human-caused injuries, those related to commercial fishing and vessel collisions have resulted in the most scrutiny of NMFS' distinguishing serious and non-serious injuries. Thus, the injuries that will be discussed at this workshop are injuries typical of encounters with vessels and fishing gear.

During this workshop, NMFS scientists and managers will evaluate its process for distinguishing between serious and non-serious injuries since the 1997 workshop and identify information needs. NMFS may also identify additional research needs and data needs, if necessary, from fishery observer, disentanglement, and stranding programs to provide sufficient information for evaluation of incidental injuries.

Goals and objectives

A workshop is warranted to evaluate the effectiveness of NMFS efforts since the 1997 workshop, and subsequent guidelines, to distinguish between serious and non-serious injury. The primary objectives of this workshop are to:

- 1) Review recommendations from the 1997 workshop and information obtained since 1997
 - a. Types and frequencies of observed injuries
 - b. Evidence of survival of marine mammals sustaining such injuries
- 2) Discuss the use of, and needed changes to, existing guidance in making serious injury determinations
 - a. Identify when information is insufficient to determine the severity of the injury
 - b. Identify data needs for making serious injury determinations
 - c. Review existing data sources for making serious injury determinations, raise awareness in these data collection programs to kinds of information needed for serious injury determinations, and identify constraints
- 3) Discuss potential actions following the workshop

Workshop Organization

The workshop consists of 2 sessions. The first session, September 10-12, is open to invited participants and public observers. Invited participants include colleague NOAA and peer agency staff, and representatives of academia, industry, and environmental non-government groups with expertise in marine mammal biology, pathobiology, and veterinary medicine. The second session, September 13, is a closed session in which only Federal Government officials will participate.

Federal Advisory Committee Act (FACA) Compliance

This workshop is not chartered under the Federal Advisory Committed Act; nor is it noticed in the *Federal Register*. For these reasons, discussions during days 1-3 of the workshop will focus

on exchanges of facts and information. The aim is not to seek consensus advice on future Federal Government policies or actions. Further, the objective is not to develop consensus advice from participants as a group. Any information, ideas, recommendations, or advice provided to NMFS will reflect the views of individual workshop participants. NMFS will incorporate divergence of views according to individual comments, and the entire set of information will be considered by Federal employees on Day 4.

Timeline and Products

The workshop will take place from September 10-13, 2007, in Seattle, Washington. NMFS will release a public document containing the Meeting Summary for days 1-3 of the workshop by January 1, 2007. The meeting summary for the Federal closed session on day 4 will be an internal document.

Based on the scientific information presented on days 1-3 (captured in the Meeting Summary) and internal discussions on day 4 of the workshop, NMFS will determine whether, how, and in what format (e.g., Technical Memo, national policy guidance, etc.) to revise the guidance for distinguishing serious from non-serious injury. In the event that a formal document, policy, or rule is developed by NMFS, the normal procedures for public review and comment will apply before such document becomes final.