

express, sleeping-car, or pipeline company.

(d) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations, and a complete description of any working or other arrangement or relationship that such organization has with any other organization. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(e) The facts and circumstances relied upon to establish that the agreement will promote the national transportation policy at 49 U.S.C. 10101.

(f) The name, title, and address of the person to whom correspondence is to be sent.

#### § 1331.2 Required exhibits.

There shall be filed with and made a part of each original application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) If the agreement pertains to a conference, bureau, committee, or other organization: (1) As Exhibit 2, a copy of the constitution, bylaws, or other documents or writings specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1; (2) as Exhibit 3, an organization chart; and (3) as Exhibit 4, a schedule of its charges to members or a statement showing how the expenses are divided among the members.

(c) As Exhibit 5, opinion of counsel that the application meets the requirements of 49 U.S.C. 10706, with specific reference to any specially pertinent provisions of articles of incorporation or association.

#### § 1331.3 Procedure.

(a) Applicant shall serve a copy of the application by first class mail upon the regulatory body having jurisdiction over rates, fares, or charges of each State or territory covered by the agreement, and the original application filed with the Commission shall include a certificate naming the bodies upon whom the application has been served.

(b) The Commission will publish in the Federal Register a notice that an application has been filed under these rules and indicating how a hearing on the application may be obtained.

(c) A protest to an application should conform to 49 CFR Part 1104.

(d) The Commission's general rules of practice govern procedural matters not specifically covered by these rules.

#### § 1331.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Commission, such approval will extend to such carrier upon the filing with the Commission by the carrier or its authorized agent of a verified statement that it has become a party to the agreement, which statement shall show the information prescribed at § 1331.1(b). Such carrier may provide transportation under joint rates or over through routes, but may not otherwise act with carriers of a different class (as defined at 49 U.S.C. 10706(d)).

#### § 1331.5 Retaining antitrust immunity.

(a) Rate bureaus must comply with the terms of their agreements, as approved by the Commission. Failure to do so will result in lack of immunity for that activity.

(b) The bureaus are required to maintain detailed minutes of all meetings where immunized matters are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Commission standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

(c) Absent Commission approval, no other changes may be made in any approved agreement.

(d) For the purposes of the statute, the following definitions shall apply:

(1) A "general increase" is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff(s).

(2) A "broad change in tariff structure" modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An "innovative fare" will be determined on a case-by-case basis; the Commission will, on request, issue opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are: (i) A fare for unlimited passenger travel; and (ii) an experimental fare providing for transportation at the passenger's option over the line of one or more carriers.

(4) A "promotional fare" generally has three characteristics: (i) Limited duration; (ii) attractive price or level of service quality; and (iii) some added

feature in addition to those normally offered.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 90880-9180]

RIN 0648-AD02

#### Depletion of the Coastal-Migratory Stock of Bottlenose Dolphins in the Mid-Atlantic

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

**ACTION:** Advance notice of proposed rulemaking and request for comments.

**SUMMARY:** Based on a review of the best available information on the status of the coastal-migratory stock of bottlenose dolphins in the U.S. mid-Atlantic, the National Marine Fisheries Service (NOAA Fisheries) is considering publication of a proposed rule designating this population stock as depleted under the Marine Mammal Protection Act (MMPA). This section is required by the MMPA when a species or population stock falls below its optimum sustainable population (OSP). If this population stock is designated as depleted, the MMPA requires the application of certain additional restrictions on taking and importation, and the preparation and implementation of a conservation plan to restore the stock to OSP. NOAA Fisheries is also requesting any additional scientific information on this action that may be available from interested parties, as required by the MMPA Amendments of 1988.

**DATE:** Comments or additional scientific information must be submitted on or before December 11, 1989.

**ADDRESS:** Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Hwy., Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 301-427-2289.

#### SUPPLEMENTARY INFORMATION:

##### Background

During the summer and fall of 1987 and early 1988, an unusually large number of Atlantic bottlenose dolphins (*Tursiops truncatus*) were found dead and washed ashore (stranded) along the

U.S. east coast from New Jersey to central Florida. A number of state and Federal agencies investigated the causes and effects of this mass mortality event (die-off). The following report on the cause of the die-off is available by writing to the ADDRESS listed above.

Geraci, J.R. 1989. Clinical investigation of the 1987-88 mass mortality of bottlenose dolphins along the U.S. central and south Atlantic coast. Final Report to the National Marine Fisheries Service, U.S. Navy, Office of Naval Research, and the Marine Mammal Commission, April, 1989.

Dr. Geraci's report describes the evidence implicating a biological toxin as the proximate cause of the die-off. The dolphins were apparently poisoned by brevetoxin, a neurotoxin produced by the dinoflagellate *Ptychodiscus brevis*, Florida's red tide organism. Contributing to the ultimate demise of the animals was a host of microbial and environmental factors. Dr. Geraci also noted the possibility that high contaminant levels found in the dolphins' tissues (e.g., organochlorines) may have affected their resilience and rendered them more susceptible either to the toxin or to the microorganisms that eventually killed them.

NOAA's Southeast Fisheries Center reports on stock structure and abundance of the Atlantic bottlenose dolphin and has assessed the impact of the dolphin die-off. Copies of the following publications, which form the basis of our discussion of bottlenose dolphin status under the MMPA, are available by writing to the Coastal Resources Division, Southeast Fisheries Center, NOAA Fisheries, 75 Virginia Beach Drive, Miami, FL 33149:

Scott, G.P., D.M. Burn and L.J. Hansen. 1988a. The dolphin die-off: Long-term effects and recovery of the population. Proceedings of the Oceans '88 Conference. Baltimore, MD, October 31-November 2, 1988. pp. 819-823.

Scott, G.P., L.J. Hansen and D.M. Burn. 1988b. Preliminary report: status of the bottlenose dolphin stocks in the US Gulf of Mexico and US Atlantic Ocean. Southeast Fisheries Center, Miami, FL. Coastal Resources Division Contribution CRD-87/88-23.

Burn, D.G. and G.P. Scott. 1988. Synopsis of available information on marine mammal-fisheries interactions in the southeastern United States: Preliminary Report. Southeast Fisheries Center, Miami, FL. Coastal Resources Division Contribution CRD-87/88-28.

Hersh, S.L. 1988a. Age class distribution of bottlenose dolphins stranded during the east coast die-off of 1987/88. NOAA Fisheries/Southeast Fisheries Center Contract Report. 45-WCNF-800633.

Hersh, S.L. 1988b. Analysis of skull and body morphometrics of bottlenose dolphins stranded during the 1987/1988 east coast die-

off. NOAA Fisheries/SEFC Contract Report. 45-WCNF-800633.

Hersh, S.L. 1987. Stock structure of bottlenose dolphins (Genus *Tursiops*) in the southeastern U.S.: a review and management considerations. Final Report to NOAA Fisheries, Southeast Fisheries Center. Contract No. 40CF700715.

#### Rulemaking petition

The Center for Marine Conservation (CMC; formerly Center for Environmental Education) petitioned NOAA Fisheries, on November 11, 1988, to begin informal rulemaking to list the U.S. mid-Atlantic, coastal-migratory stock of bottlenose dolphins as depleted under the MMPA. On December 10, the CMC amended its petition with additional information and concerns regarding stock differentiation. CMC noted the scientific debate on the geographic "distinctness" of the coastal population and stated that all dead animals cannot with certainty be assigned to a coastal stock. In re-stating its position, the CMC recommended that NOAA Fisheries proceed with a depletion designation until such time as the question of stock differentiation is resolved. As discussed below, NOAA Fisheries believes that the stranded animals were primarily from a separate, coastal stock that migrates between Florida and New Jersey. Copies of the CMC's rulemaking petitions are available from the Information Contact listed above.

The MMPA Amendments of 1988 (Public Law 100-71) added a new section 115 to provide specific timetables and procedures for conducting status reviews, for rulemaking on depletion, and for preparing conservation plans for marine mammals. In this instance, no petition for a status report was received since the report was already completed and available in June, 1988 (Scott et al. 1988b). Based on information provided in the status report, CMC petitioned NOAA Fisheries to begin rulemaking procedures necessary to designate this stock as depleted under the MMPA. Before rulemaking can begin, however, new subsection 115(a)(2) requires publication in the Federal Register of a call to assist the Secretary [of Commerce] in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent feasible, informal working groups of interested parties and other methods to gather the necessary information.

NOAA Fisheries finds that CMC's petition has substantial merit and is giving serious consideration to proposing this stock for depleted status. This advance notice of proposed rulemaking incorporates the "call for assistance" required by section 115(a)(2) and a summary review of the 1988 status report. Based on a review of any scientific submissions received as a result of this notice, and all comments received on our proposal, NOAA Fisheries will determine, prior to publication of any proposed rule, whether there is a need for informal working groups to gather additional information.

#### Status Report Summary

##### 1. Stock Structure

Bottlenose dolphins are found in the U.S. Gulf of Mexico and in U.S. Atlantic waters. In the U.S. Atlantic, this species is found from Long Island, NY to the Florida Keys. North of Cape Hatteras, NC, bottlenose dolphins have a disjunct distribution with concentrations along the coast (in embayments and within several kilometers of the coast) and offshore near the continental shelf margin (from 60 to 200 kilometers from the coast). South of Cape Hatteras, the coastal/offshore distribution is less distinct.

During summer in the U.S. Atlantic, bottlenose dolphins are distributed along the coast as far north as Long Island, NY and offshore as far north as Nova Scotia, Canada. The main summertime, coastal bottlenose dolphin concentration is from North Carolina to New Jersey. During autumn, density distribution patterns observed from population surveys suggest that coastal animals migrate south to Florida. During winter, bottlenose dolphins in coastal U.S. Atlantic waters are distributed from south of Cape Hatteras to the northern and central Florida coast, but concentrate at the southern end of this range. During spring, concentrations shift northward along the coast to complete a hypothesized migratory cycle. It is not clear whether the offshore population follows a similar north-south pattern.

There appear to be both near-shore (coastal) and offshore stocks of bottlenose dolphins along the U.S. Atlantic coast and in other ocean areas. There are apparent morphological and biochemical differences between the coastal and offshore stocks found in South Africa, the eastern North Pacific and in the southeastern United States. For example, offshore animals are generally larger and have higher

concentrations of hemoglobin than coastal or warmer-water stocks. Some animals with intermediate blood characteristics have been found in the wild, suggesting some, probably low, frequency of genetic exchange between stocks. Within the coastal population there are probably local, resident stocks in certain embayments (e.g., near Savannah, GA) and a stock that migrates into and out of these embayments on a seasonal basis (coastal-migratory stock). The stranding data collected during 1987 and 1988, and the observed density distribution patterns along the U.S. Atlantic coast, support the hypothesis of a single coastal-migratory stock of bottlenose dolphins that ranges seasonally as far north as Long Island, NY and as far south as central Florida.

Both coastal-migratory and offshore stocks may have been affected by the die-off. The likelihood of an animal dying offshore, however, and then being stranded onshore is expected to be considerably less than for an animal dying near the coast. Thus, reported strandings may not include offshore animals that did not come ashore. Of 36 blood samples taken from affected animals, 35 exhibited coastal hemoglobin characteristics. One sample showed hybrid coastal/offshore characteristics. Resident, local stocks were apparently unaffected by the die-off. Best available information suggests that the observed mortality may have primarily affected the coastal-migratory stock of dolphins that ranges between Florida and New Jersey.

## 2. Population Abundance

Historically, about 15,000 bottlenose dolphins are thought to have lived in mid-Atlantic coastal waters (including coastal-migratory and resident stocks) based on records from the turn of the century. In 1979-81, the estimated average mid-Atlantic summer abundance of bottlenose dolphins is believed to have ranged from 4,300 to 12,900 animals (95% confidence level) including both coastal and offshore stocks, i.e., the total U.S. mid-Atlantic population. The best available information suggests that, in recent times, coastal North Carolina and Virginia supported 1,200 or more dolphins during part of the spring and summer. This number may have represented a substantial portion of the mid-Atlantic, coastal-migratory stock prior to the die-off. Population surveys of August, 1987 resulted in estimates of 350 to 1,300 animals in the coastal mid-Atlantic. Recent estimates may be conservative and represent surface abundance only.

The most direct way to assess the effect of the 1987-88 die-off on the dolphin population is to compare pre- and post die-off population abundance. In this case, consistent population abundance indices are not yet available; and, additional population survey data collection is needed from the northern and southern range of the stock. Consequently, potential impact of the die-off was estimated by comparing stranding rates reported during the die-off period to the prior 3-year average reported stranding rate. Inherent in this method of assessment is the assumption that reported stranding rate is a consistent index of stock mortality rate for the period of analysis.

During the 11 month period from June, 1987 through April, 1988, 742 stranded bottlenose dolphins were reported to the Smithsonian Institution's marine mammal stranding events program. This represents 10.11 times the average annual number of dolphins reported stranded during the previous three years. Assuming that the natural annual mortality rate is 7% (or 6.42% for 11 months), based on previously published reports, and assuming further that the rate of stranding is proportional to the mortality rate, the total mortality (m) during the 11 month period of the die-off can be estimated as  $10.11 \times 6.42 = 64.9\%$ . An annual birth rate (b) on the order of 11.5% has been estimated based on observations of the percent of calves in the coastal mid-Atlantic stock of dolphins affected by the die-off. Thus, a potential decline for this stock since early 1987 is estimated as  $b-m = -53.4\%$ .

Higher assumed rates of natural mortality imply larger decreases in stock abundance. A review of the scientific literature suggests that rates of 5-10% may reasonably reflect the likely range of natural mortality in captive bottlenose dolphins. The relationship between captive dolphin natural mortality rates and wild population rates is unknown. Natural mortality rates in wild populations could be higher than in captive dolphins if (1) The risks of death due to natural causes such as disease, predation, and starvation are reduced in the captive environment, or (2) age classes with high rates of natural mortality in natural populations are under-represented in captive populations.

There are no available data to test the hypothesis that increased public awareness increases the probability of detection and reporting of stranded animals, nor to estimate the possible magnitude of change, especially along densely populated coastlines. Increases in this probability of more than 4-times

over a 5-10% natural mortality range can result in estimates of population increase due to the die-off. An assumed doubling of the probability results in estimates of decline of 11.7%, 20.9%, and 34.8% for assumed annual natural mortality rates of 5%, 7%, and 10%, respectively. Alternate analysis of the stranding-rate data, stratifying over portions of the coast most densely populated, and for which increased public awareness would have the smallest expected impact on the probability of detecting and reporting strandings, consistently results in estimates of reduction greater than 40% over the 5-10% natural mortality rate range.

There is a large degree of uncertainty in the estimated magnitude of reduction in the dolphin population due to a lack of data and imprecision in estimates of natural mortality rates. Further data collection on population abundance levels and stock discreteness may reduce these uncertainties. On the basis of the best available information, however, NOAA Fisheries concludes that the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic probably declined by more than 50% as a result of the 1987-88 die-off.

## 3. Optimum Sustainable Population

The MMPA states that marine mammal species and population stocks should not be permitted to diminish below their OSP. NOAA Fisheries has defined OSP, in 50 CFR 216.3, as a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers resulting from additions to the population due to reproduction and growth, less losses due to natural mortality. MNP is often represented as a percentage of carrying capacity. For example, in northern fur seals MNP occurs when the population is at about 60% of its carrying capacity. In general, populations of large mammals appear to grow most rapidly when at numbers greater than 50% of carrying capacity.

By analogy with other large mammal populations, the population level expected to result in MNP for bottlenose dolphins is greater than 50% of carrying capacity. However, because of uncertainties regarding abundance estimates, carrying capacity has not been estimated for Atlantic or Gulf stocks of this species. Although there remain a number of uncertainties, including total mortality during the die-off, available information for the mid-



Atlantic coastal-migratory stock suggests that this stock may have been reduced by more than 50% due to the die-off. Assuming this level of stock reduction and a stable but unknown carrying capacity, NOAA Fisheries believes that this stock is likely to be below OSP and, thus, depleted under the MMPA.

A significant reduction in food availability or major changes in physical environmental factors, i.e., atmospheric or oceanographic conditions, if demonstrated, could be evidence of a change in carrying capacity for bottlenose dolphins in the coastal mid-Atlantic. But, relatively short-term, natural or man-induced mortality factors, such as increases in naturally-occurring biotoxins, would not necessarily be of such a sustained or widespread occurrence as to constitute a change in the carrying capacity of this environment for this species. We have no evidence of significant, permanent changes in this ecosystem that might prevent bottlenose dolphins from eventually attaining pre die-off levels.

The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under \* \* \* this Act, determines that a species or population stock is below its [OSP]." NOAA Fisheries will request consultation and concurrence by the Marine Mammal Commission before publishing a proposed rule regarding depletion of the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic.

#### Consequences of a Depletion Designation

The MMPA Amendments of 1988 included a new section 114 which replaces most earlier provisions for granting incidental take authority to commercial fishermen with an interim exemption system valid until October 1, 1993. The purpose of the new system is to provide better information on interactions between commercial fisheries and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' inability to make OSP determinations for all species affected by the fisheries. The information collected in conjunction with the exemption system and information on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries after October 1, 1993.

Depleted stocks may be taken under the interim exemption incidental to commercial fishing operations; however, no intentional lethal takes of depleted stocks or any cetaceans are authorized. Thus, a depletion finding for the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic will not necessarily affect commercial fisheries at least until 1993. If incidental take in a fishery is found to have a significant impact on a marine mammal population, NOAA Fisheries may issue emergency rules or conditions on exemptions under section 114 to mitigate adverse impacts.

Under the MMPA, small incidental takes that have a negligible impact on depleted stocks may be authorized for certain activities other than commercial fishing; and permits may be issued

authorizing taking of depleted species for research purposes. The MMPA requires, however, that, when issuing a permit for research involving lethal taking from a depleted stock, NOAA Fisheries first determine that the research will directly benefit the stock, or that the research fulfills a critically important research need.

Depleted stocks may not be taken for public display purposes; however, the mid-Atlantic, coastal-migratory stock is not a source of public display animals. In recent years, permanent removals from the wild of bottlenose dolphins for public display have been authorized from Gulf of Mexico stocks and from the local population in the Indian-Banana River area on Florida's east coast. The status of these stocks relative to OSP has not yet been determined.

If the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic is designated as depleted, NOAA Fisheries will prepare a Conservation Plan, as required by section 115(b) of the MMPA, for the purpose of conserving and restoring the stock to its OSP. In addition to the status of the stock and the cause of its decline, the Plan will include: (a) An assessment of the existing and possible threats to this population such as pollution and commercial fishing, (b) a discussion of critical information needs such as post die-off abundance indices and stock differentiation, (c) a description of research and management objectives, and (d) a schedule for implementation.

Dated: October 3, 1989.

James E. Douglas, Jr.,  
Acting Assistant Administrator for Fisheries  
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