

17, 1990, and to file written comments prior to May 25, 1990.

The written comments received by FRA provided additional information and raised further issues and subissues related to the matters discussed in the ANPRM. In addition, FRA received significant oral comments on same subject. Representatives of the railroads participating in the AAR Uniformity Committee expressed an interest in exploring possibilities concerning the format in which accident/incident data is gathered pursuant to the FRA Guide for Preparing Accident/Incident Reports. Since these issues bore on regulatory obligations and might touch on issues within the scope of the advance notice, FRA determined that the meeting should be open to any interested person who wishes to observe. (FRA would endeavor to favorably entertain requests for additional meetings of this type from other interested parties.)

Consequently, FRA held an open meeting on these matters with members of the AAR Uniformity Committee on June 13, 1991.

At their request, FRA has scheduled a second open meeting with members of the AAR Uniformity Committee, to continue discussion of these matters. This open meeting will be held Wednesday, August 21, 1991, beginning at 8:30 a.m., in room 4338 of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

Issued in Washington, DC, on August 9, 1991.

Philip Olekszyk,

Deputy Associate Administrator for Safety.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Chapter VI

Receipt of a Petition for Rulemaking: Project Reefkeeper

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of petition for rulemaking and request for comments.

SUMMARY: NOAA announces receipt of a petition for emergency rulemaking or fishery management plan action under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Project Reefkeeper has petitioned the U.S. Department of Commerce to promulgate a rule to prohibit the taking and landing of live rock within the

agency's jurisdiction for the South Atlantic, Caribbean, and Gulf of Mexico. The petitioner has not submitted a proposed rule with its request.

DATES: Comments will be accepted through September 30, 1991.

ADDRESSES: Copies of the petition are available and may be obtained by contacting B. Michael McLemore, Attorney Advisor, Office of General Counsel, NOAA, 9450 Koger Boulevard, suite 116, St. Petersburg, FL 33702; telephone (813) 893-3817. Comments on the need for such a regulation, its objectives, alternative approaches, and any other comments may be addressed to Dr. William W. Fox, Jr., Assistant Administrator for Fisheries, NOAA, NMFS, Silver Spring Metro Center #1, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: B. Michael McLemore, 813-893-3817.

SUPPLEMENTARY INFORMATION: Live Rock, as defined in the petition for rulemaking, is a broad term used by the marine life collection industry to describe several types of substrate colonized by marine organisms. Four main types of live rock are distinguished: (1) Rubble Rock—Also called base rock, "possesses very little life" but is desirable for the "borers" living in the rock and as a substrate "base" in aquaria. Rubble rock is collected from mounds in shallow water in back-reef locations. (2) Algae Rock—also called plant rock, is colonized chiefly by algae, secondarily by feather duster worms and other invertebrates. Algae rock is collected from rubble areas in the back reef and from inshore areas on both the Atlantic and Gulf sides of the Keys. (3) False Coral—Also called anemone rock, is covered with anemones in the genera *Ricordea* and *Rhodactis*, which are accompanied by encrusting gorgonians, chicken liver sponges, other invertebrates, and algae. False coral occurs in patch reef areas and in other reef habitats. (4) Sea Mat—Also called gravel rock, is colonized almost exclusively by anemone-like organisms, usually of the genus *Zoanthus*, and is principally collected from dredged rock jetties.

Comments received will be considered by NMFS in determining whether to proceed with the development of regulations suggested by the petition. Upon determining whether to open the rulemaking suggested by this petition, the Assistant Administrator will publish a notice of the agency's decision or action in the **Federal Register**.

Dated: August 8, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 91-19350 Filed 8-14-91; 8:45 am]

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50 CFR Part 216

[Docket No. 90890-1182]

RIN 0648-AD02

Depletion of the Coastal-Migratory Stock of Bottlenose Dolphins in the U.S. Mid-Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposed to designate the coastal-migratory stock of bottlenose dolphins along U.S. mid-Atlantic coast as depleted under the Marine Mammal protection Act (MMPA). This action is required by the MMPA when a species or population stock falls below its optimum sustainable (OSP). Since this stock declined by more than 50 percent as a result of a die-off that occurred during 1987-88, it is believed to be below a level that can maintain maximum net productivity, which is the lower bound of the OSP range. 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 its OSP.

DATES: Comments must be submitted on or before September 30, 1991.

ADDRESSES: Comments should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources (F/PR), 1335 East-West Hwy., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Permits Division Office of Protected Resources, 301-427-2322.

SUPPLEMENTARY INFORMATION:

Background

During 1987-88, an unusually large number of Atlantic bottlenose dolphins (*Tursiops truncatus*) were found dead and washed ashore along the U.S. east coast from New Jersey to central Florida. There was a degree of uncertainty in the estimated magnitude of the reduction in the dolphin stock due to a lack of data and imprecision in estimates of natural mortality. However, on the basis of the best available information, NMFS concluded that the

coastal-migratory stock of bottlenose dolphins along the mid-Atlantic coast probably declined by more than 50 percent as a result of the die-off.

The MMPA states that marine mammal species and population stocks should not be permitted to diminish below their OSP. NMFS 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 percent of its carrying capacity. In general, populations of large mammals appear to grow most rapidly when at numbers greater than 50 percent 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 percent of carrying capacity. However, because of uncertainties regarding abundance estimates, carrying capacity has not been estimated for Atlantic or Gulf stocks of this species. Assuming a reduction of greater than 50 percent in the population due to the die-off and a stable but unknown carrying capacity, NMFS believes that this stock is likely to be below OSP and, thus, depleted under the MMPA.

NMFS published an advance notice of proposed rulemaking (ANPR) (54 FR 41654, October 11, 1989) that incorporated the "call for assistance" required by section 115(a)(2) of the MMPA and a summary of a 1988 status report on this stock. This information will not be repeated here. Based on a review of public comments received on the ANPA and a recent review of the status of this stock, NMFS concludes that it is probably below OSP and a depletion designation is appropriate.

Comments on the ANPR were received from the following groups: Marine Mammal Commission, Marine Mammal Coalition, Greenpeace USA.

The Marine Mammal Commission (Commission) Commented that:

(A) available information does suggest that the nearshore stock of bottlenose dolphins along the mid-Atlantic states may have been reduced by fifty percent or more and this qualifies the stock for designation as "depleted" under the (MMPA). The

Commission therefore recommends that the Service develop a conservation plan for the stock as soon as possible, but before taking final action on the proposed designation, and then act promptly to implement the plan.

The Commission believes that a conservation plan may be the appropriate vehicle to address the uncertainties regarding the current status of the bottlenose dolphin stocks and determine when stocks affected by the die-off have recovered.

NMFS intends to begin expeditious preparation of a conservation plan for the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic if a final determination is made that the stock is depleted. Of primary concern in the plan will be the development of consistent indices of post-die-off population abundance to compare with available pre-die-off data and to test experimentally the hypothesis of stock differentiation between the coastal and offshore dolphins. These survey data and experimental results allow further assessment of the probability of stock decline and additional assessment of stock status relative to OSP. For the purpose of assessing population status relative to OSP, reduction levels of less than 40 percent from the estimated carrying capacity will be considered not to have resulted in depleted status of the stock.

The Marine Mammal Coalition (Coalition), representing members of the marine mammal display and scientific research community, pointed out the uncertainties in estimates of dolphin abundance and vital rates and questioned whether information exists to support any conclusions regarding this stock. The Coalition believes that:

The OSP concept has its origin in the politics of conservation; it has little relationship to biology. The depletion concept, as a derivation of OSP, is weaker still The population is not currently exploited for live-capture, and the estimated human-induced mortality appears to be low (<2%). We recommend that the mid-Atlantic population of bottlenose dolphins not be declared depleted.

As the Coalition pointed out, the mid-Atlantic, coastal-migratory stock is not a source of public display animals. In recent years, captures of bottlenose dolphins for zoos and aquariums have been authorized from the Gulf of Mexico stocks and from the local population in the Indian-Banana River area on Florida's east coast. Thus, the depletion designation is not expected to affect the availability of bottlenose dolphins for the public display industry.

Mathematical estimates using the best available information indicate that the

coastal-migratory stock declined by more than 50 percent as a result of the 1987-88 mortality. In arriving at such a conclusion, NMFS used a conservative estimate of both natural mortality levels and the number of animals affected by the die-off. Use of a higher estimate in either case would have resulted in a higher estimate of total mortality. NMFS notes that most estimates of wildlife populations are expressed in terms of confidence intervals. NMFS believes that it would not be fulfilling its responsibilities under the MMPA if it had to wait until there is absolute certainty over the status of a stock before protective actions are initiated. Such a condition would be most likely only after a population is severely depleted, and the process of enabling a population to recover would then be much more difficult.

Greenpeace USA supported the depletion designation and noted that:

Between June 1987 and the end of April 1988, 742 stranded bottlenose dolphins from New Jersey to Florida were reported to the Smithsonian Institution though the number of dolphins found dead is most likely a fraction of the total mortality. Current evidence suggests the coastal migratory stock was primarily affected and that a potential decline for this stock since the beginning of 1987 could be over 50%.

NMFS agrees and, therefore, proposes a depletion designation for this stock.

Classification

The Assistant Administrator for Fisheries, NOAA, determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. With the exception of a carefully defined permitting process for obtaining animals for public display, the Marine Mammal Protection Act prohibits taking of marine mammals for commercial purposes. The mid-Atlantic, coastal-migratory stock of bottlenose dolphins is not a source of public display animals. The only authorized captures of bottlenose dolphins for public display have been from the Gulf of Mexico and a nonmigratory stock resident in the Indian-Banana River area on Florida's east coast. This rule would, therefore, have no impact on commerce, and the rule will not result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, government agencies, or geographical regions; or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or

on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This rule will have no economic effects save those mandated by statute. Consequently, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. Additionally, this rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

A designation of depletion in this instance, which is similar to a listing action under section 4(a) of the Endangered Species Act, is categorically

excluded from the requirement to prepare an environmental assessment or an environmental impact statement.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 216

Administrative practices and procedure, Marine mammals.

Dated: August 9, 1991.

William W. Fox, Jr.,

Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—[AMENDED]

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. In § 216.15, a new paragraph (d) is added to read as follows:

§ 216.15 Depleted species.

* * * * *

(d) Bottlenose dolphin (*Tursiops truncatus*), coastal-migratory stock along the U.S. mid-Atlantic coast.

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