

United States of America
Voluntary National Cetacean Conservation Report, 2007

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to the Conservation Committee
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1. Legal and other developments

1.1 The Marine Mammal Protection Act

All cetaceans in U.S. waters are protected under the *Marine Mammal Protection Act (MMPA)* of 1972. All U.S. citizens and vessels must comply with the MMPA while in international waters. Under the MMPA, it is illegal to take any marine mammals, subject to certain conditions. Take is defined as “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.” The objectives of the MMPA are to maintain the health and stability of the marine ecosystem and to obtain an optimum sustainable population level for all marine mammal stocks, taking into account the carrying capacity of the ecosystem.

Cetacean species or stocks that are below the optimum sustainable population level are considered “depleted” under the MMPA. Species listed under the Endangered Species Act (ESA) are also considered depleted under the MMPA. Fourteen cetacean stocks in U.S. waters are currently listed as depleted under the MMPA, including the nine species listed in section 1.2. The 5 cetacean species considered depleted under the MMPA that are not listed under the ESA are:

- Spotted dolphin, Northeastern offshore stock
- Spinner dolphin, Eastern stock
- Killer whale, AT1 transient stock
- Bottlenose dolphin, Western North Atlantic coastal stock
- Beluga whale, Cook Inlet stock

Permits and authorizations are required under the MMPA to conduct activities that are likely to result in the “taking” of a marine mammal. The U.S. National Oceanic and Atmospheric Administration (NOAA) Fisheries Service can authorize the take of cetaceans for scientific research, enhancing the survival or recovery of a marine mammal species or stock, commercial and educational photography, first-time import for public display, capture of wild marine mammals for public display, incidental take during commercial fishing operations, and incidental take during non-fishery commercial activities.

1.2 The Endangered Species Act

In the United States, cetacean species deemed to be “in danger of extinction throughout all or a significant portion of its range” are protected as “endangered” under the *Endangered Species Act (ESA)* of 1973. Cetacean species which are likely to become endangered within the foreseeable future are protected as “threatened.” The ESA prohibits the taking of any endangered or threatened species, subject to certain conditions. Take is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” Cetacean species found in U.S. waters, which are currently listed under the ESA include:

- Blue whale (endangered)
- Bowhead whale (endangered)
- Fin whale (endangered)
- Humpback whale (endangered)
- Killer whale, Southern Resident Distinct Population Segment (endangered)
- Right whale (endangered)
- Sperm whale (endangered)
- Sei whale (endangered)

The ESA requires the Federal government to scrutinize activities that may adversely affect threatened or endangered species and their critical habitats. Accordingly, all U.S. Federal agencies must consult with NOAA Fisheries Service on activities that may affect a listed marine or anadromous species. These interagency, or

section 7, consultations are designed to assist Federal agencies in fulfilling their duty while ensuring that their actions do not jeopardize the continued existence of a species or destroy or adversely modify designated critical habitat. Biological Opinions document NOAA Fisheries Service's opinion as to whether the Federal action is likely to jeopardize the continued existence of listed species, or result in the destruction or adverse modification of critical habitat. Biological Opinions may provide an exemption for the "take" of listed species while specifying the amount or extent of take anticipated and the reasonable and prudent measures necessary to minimize impacts from the Federal action.

1.3 The National Environmental Policy Act

Federal activities that may significantly impact cetacean and other wildlife species, or their habitats, must undergo an environmental analysis under the *National Environmental Policy Act (NEPA)* of 1969. Key activities regularly assessed for impacts on cetaceans are seismic surveying, military exercises and scientific research activities.

1.4 The Marine Protection, Research and Sanctuaries Act

The U.S. also protects cetaceans through the designation of National Marine Sanctuaries, authorized under the *Marine Protection, Research and Sanctuaries Act* of 1972. National Marine Sanctuaries manage and protect designated areas of the nation's oceans and Great Lakes and provide habitat for multiple cetacean and other protected species. One of the 13 designated sanctuaries, the Hawaiian Islands Humpback Whale National Marine Sanctuary, was designated specifically to protect humpback whales present in Hawaiian waters each year from November-May.

2. Information on whale watching operations

In the U.S., whale watching focuses primarily on inshore dolphins, resident killer whales, humpback whales, fin whales, minke whales, and gray whales as they migrate close to shore. NOAA Fisheries Service prohibits viewing of marine mammals in a manner that can cause "harassment" of the animal, including feeding or attempting to feed an animal. NOAA Fisheries Service does not condone activities that involve closely approaching, interacting, or attempting to interact with cetaceans, including attempting to swim with, pet, touch, or elicit a reaction from the animals.

NOAA Fisheries Service has developed educational programs, viewing guidelines, and regulations to manage whale watching operations and to promote safe and responsible wildlife viewing practices. In addition, NOAA Fisheries Service and the NOAA's National Marine Sanctuary Program have developed a broad-based "Ocean Etiquette" program to promote ocean stewardship by providing the public with guidance on minimizing impacts to marine life and habitats.

2.1 Recommended Viewing Guidelines

Whale watching in the U.S. is managed mainly through viewing guidelines that include region-specific information for local species and habitats. NOAA Fisheries Service has developed viewing guidelines for each region. NOAA Fisheries Service partners with other Federal and state agencies and non-governmental organizations to promote safe and responsible wildlife viewing practices. These viewing guidelines, which can vary by region and species, promote a "Code of Conduct" that recommends approach distances for vessels and aircraft, methods for vessel and aircraft approach, speed limits for vessels in areas with high numbers of cetaceans, and maximum viewing time limits.

2.2 Regulations

While the majority of whale watching in the U.S. is managed through voluntary guidelines, whale watching of endangered humpback whales in Alaska and Hawaii is managed under regulations. These regulations prohibit vessels from approaching within 100 yards (91.4 m) of any humpback whale, including placing a vessel in the path of an oncoming humpback whale so that the whale surfaces within 100 yards (91.4 m) of the vessel. In Hawaii, aircraft are also prohibited within 1,000 feet (300 m) of any humpback whale. In Alaska, the U.S. National Park Service has additional regulations that prohibit the operation of a vessel within one-quarter nautical mile of a humpback whale and limits the speed of cruise ships to 13 knots in Glacier Bay National Park.

The critically endangered status of North Atlantic right whales has prompted regulations that prohibit vessels from approaching (including by interception) within 500 yards (460 m) of a right whale by vessel, aircraft, or any other means. When within 500 yards (460 m) of a right whale, a vessel must steer a course away from the right whale and immediately leave the area at a slow safe speed and any aircraft must take a course away from the right whale and immediately leave the area at a constant airspeed.

NOAA Fisheries Service's Pacific Islands Region and Northwest Region are currently considering regulations for viewing activities that may result in harassment of Hawaiian spinner dolphins and Southern Resident killer whales. In the meantime, NOAA Fisheries Service continues to promote the recommend Regional viewing guidelines for both species.

3. Current Government programs related to cetacean conservation

The U.S. is constantly conducting population abundance and distribution surveys, assessing the health of cetacean populations, and managing human-caused injury and mortality.

3.1 Cooperation with States and Alaska Native Organizations

Under the ESA, NOAA Fisheries Service can enter into agreements with any state that establishes and maintains an "adequate and active" program for the conservation of endangered and threatened species. Once a state enters into such an agreement, NOAA Fisheries Service provides Federal funding for implementation of the state's conservation program. States use Federal funding to support management, outreach, research, and monitoring projects with direct conservation benefits for threatened and endangered species.

NOAA Fisheries Service also has cooperative agreements with Alaska Native organizations to conserve marine mammals and co-manage subsistence hunting of cetaceans and other marine mammals by Alaska Natives. Cooperative agreements may include Federal grants to Alaska Native organizations for collecting and analyzing marine mammal population data, monitoring the harvest of cetaceans for subsistence use, participating in cetacean research, and developing marine mammal co-management structures with U.S. Federal or State government agencies.

3.2 Cooperation with Non-Governmental Organizations

NOAA Fisheries Service formed a partnership in 2002 with a non-profit organization, the National Fish and Wildlife Foundation (NFWF), to coordinate two grant programs to further conservation efforts for critically endangered North Atlantic right whales. Through the National Whale Conservation Fund, NOAA Fisheries Service provides grants on a competitive basis for proposals designed to support research, management, conservation and education/outreach activities related to the conservation, and recovery of environmental resources.

To respond to cetacean strandings, NOAA Fisheries Service supports volunteer stranding networks in all coastal states. NOAA Fisheries Service oversees and trains volunteer stranding networks personnel to collect data and tissue samples of stranded cetaceans for analysis to determine the presence of toxins, disease, and indications of human interactions.

3.3 National Initiatives

NOAA Fisheries Service develops Stock Assessment Reports (SAR) for each stock of cetaceans in U.S. waters. Each stock assessment describes the stock's geographic range, a minimum population estimate, current population trends, current and maximum net productivity rates, optimum sustainable population levels and allowable removal levels, and estimates of all annual human-caused mortality and serious injury. This information is used to evaluate the progress of U.S. commercial fisheries in reducing the incidental mortality and serious injury of marine mammals. NOAA Fisheries Service established three regional scientific review groups to advise and report on the status of marine mammal stocks, research needs for stocks, impacts to stocks, and methods to reduce incidental mortality of marine mammals incidental to fishing operations within Alaskan waters, along the Pacific Coast (including Hawaii), and the Atlantic Coast (including the Gulf of Mexico).

NOAA Fisheries Service also develops and implements recovery plans for cetaceans listed as threatened and endangered under the ESA. Recovery plans incorporate: 1) a description of site-specific management actions necessary to achieve recovery of the species; 2) objective, measurable criteria which, when met, would result in

a determination that the species be removed from the list; and 3) estimates of the time and costs required to achieve the plan's goal. Many recovery plans are written by recovery teams, comprised of representative stakeholders.

In 2004, NOAA Fisheries Service published a report titled, "Evaluating Bycatch: A National Approach to Standardized Bycatch Monitoring Programs." The report describes a National Bycatch Strategy for monitoring bycatch in U.S. fisheries. The U.S. has begun work on a subsequent National Bycatch Report that will provide a comprehensive quantification of regional and national bycatch estimates in U.S. commercial fisheries and provide a basis for setting bycatch management goals in the future. This report, planned for release in 2008, will discuss impacts and bycatch of protected species, including cetaceans, in a subset of selected U.S. commercial fisheries where data and estimation procedures are available to support the development of bycatch estimates.

3.4 Research

The U.S. Government conducts a wide variety of cetacean conservation research. Research projects include: annual assessments of cetacean population abundance and population dynamics; cetacean movement patterns using satellite telemetry; cetacean behavior; genetic species or stock identification; fisheries bycatch mitigation (including research on fishing gear modification and acoustic deterrent devices); impacts of sound on individuals and populations; ship strike reduction strategies; and toxicology and disease assessments.

In addition, NOAA Fisheries Service partners with scientists worldwide to conduct health assessment studies of wild marine mammal populations to develop baseline data, monitor trends, and investigate the impacts of disease, natural toxins, and pollution. Current health assessment projects include ongoing studies of bottlenose dolphin populations in the Gulf of Mexico and the Atlantic Ocean, endangered North Atlantic right whales, North Pacific gray whales, monk seals in the Hawaiian Islands chain, and several others.

4. Current threats to cetacean conservation and management measures taken/proposed

4.1 Fisheries interactions

Interaction with fishing gear incidentally injures and kills cetaceans and is a leading cause of mortality for North Atlantic right whales. NOAA Fisheries Service works with the fishing industry to develop or modify fishing gear and practices to minimize bycatch. The MMPA requires NOAA Fisheries Service to reduce the incidental serious injury and mortality of marine mammals in commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate. NOAA Fisheries Service publishes an annual List of Fisheries categorizing each commercial fishery based on whether it has frequent (Category I), occasional (Category II), or remote (Category III) likelihood of incidental mortality and serious injury of marine mammals. Fishermen operating in Category I or II fisheries must register with NOAA Fisheries Service, carry an observer if requested, and comply with any applicable take reduction plan regulations.

NOAA Fisheries Service develops and implements take reduction plans (TRP) to recover or prevent the depletion of strategic marine mammal stocks that interact with Category I and II fisheries. A strategic stock is one which is listed as threatened or endangered under the ESA, is declining and likely to be listed under the ESA, is listed as depleted under the MMPA, or has direct human-caused mortality which exceeds the stock's "Potential Biological Removal (PBR) level" (defined as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population). NOAA Fisheries Service convenes Take Reduction Teams, which consist of a balance of representatives from the fishing industry, fishery management councils, State and Federal resource management agencies, the scientific community, and conservation organizations to prepare TRPs. Once a TRP becomes effective, the Team meets periodically to monitor implementation of the plan. There are currently 8 active Take Reduction Teams.

4.2 Marine Acoustics and Seismic Surveys

Anthropogenic underwater sound has the potential to cause behavioral changes and other adverse effects on cetaceans, including population level effects.. NOAA Fisheries Service is working with acoustic experts to develop noise exposure criteria for cetaceans and other living marine resources. In addition, NOAA Fisheries Service works with the U.S. Navy to monitor and mitigate its use of underwater sonar, works with the shipping industry to address the impact of shipping noise on cetaceans, funds research to address critical data needs on potential impact of sound on marine mammals, and contributes to public education.

4.3 Ship Strike Reduction

Ship strikes are a significant threat to large whales. In the U.S., collision with vessels is a leading human-caused source of mortality for the endangered North Atlantic right whale. To address this threat, the U.S. has developed regulatory and non-regulatory measures to reduce ship strikes, including proposed operational measures for vessels, education and outreach programs, technological research, and research and monitoring activities. In 1999, NOAA Fisheries Service and the U.S. Coast Guard implemented Mandatory Ship Reporting Systems, endorsed by the International Maritime Organization (IMO), for ships greater than 300 gross tons in two key right whale habitats—one off the northeast U.S. and one off the southeast U.S. NOAA Fisheries Service and other state and Federal agencies conduct extensive aircraft surveys for right whales. NOAA Fisheries Service issues right whale “alerts” and ship speed advisories, through multiple media outlets, in areas and times where right whales occur. In November 2006 the U.S. established a set of recommended vessel routes in four locations along the entire East coast of the U.S. to reduce the likelihood of ship collisions in key North Atlantic right whale habitats. The U.S. submitted a proposal to the IMO to reconfigure the Traffic Separation Scheme that services Boston, Massachusetts, which was approved in December 2006. This realignment, which will be implemented in July 2007, is expected to significantly reduce the risk of ship strikes to baleen whales. In June 2006, the U.S. proposed regulations to implement speed restrictions to reduce the threat of ship collisions with North Atlantic right whales. In Glacier Bay National Park, Alaska, the National Park Service limits the speed of cruise ships to 13 knots to protect humpback whales.

5. Reporting systems for cetacean injuries/mortality/strandings

5.1 Fisheries bycatch reporting

The reporting of bycatch of marine mammals incidental to commercial fishing operations occurs under the Marine Mammal Authorization Program (MMAP) and through NOAA Fisheries Service’s National Observer Program. Fisheries that have frequent or occasional incidental mortality and serious injury of marine mammals must carry observers and register under the MMAP. Information on marine mammal interactions with commercial fishers collected under this program and other sources provides the basis for determining whether the incidental serious injury and mortality of marine mammals in commercial fishing operations has been reduced to insignificant levels approaching a zero mortality and serious injury rate. In addition, all fishing vessel owners or operators must report all incidental injuries and mortalities of marine mammals that have occurred as a result of commercial fishing operations.

5.2 Marine Mammal Health and Stranding Response Program

NOAA Fisheries Service’s Marine Mammal Health and Stranding Response Program (MMHSRP) was established in 1992 to: 1) correlate marine mammal health with available data on physical, chemical, environmental, and biological parameters; 2) coordinate responses to unusual mortality events; and 3) facilitate collection and dissemination of reference data and to assess health trends. The MMHSRP has several components:

- National Marine Mammal Stranding Network
- Marine Mammal Unusual Mortality Event Response and Investigation Program
- John H. Prescott Marine Mammal Rescue Assistant Grant Program
- Marine Mammal Tissue and Serum Bank Program
- Marine Mammal Disentanglement Program
- Marine Mammal Biomonitoring Program
- Marine Mammal Analytical Quality Assurance Program
- MMHSRP Information Management Program

The National Marine Mammal Stranding Network consists of about 300 organizations, including volunteers from nonprofit organizations, aquaria, universities, and state and local governments, partnered with NOAA Fisheries Service to investigate marine mammal strandings. The MMHSRP oversees the activities of the stranding networks through a national coordinator and six regional coordinators. Every rescue and detailed study of stranded marine mammals yields information on species, sex, length, location, and any evidence of human interaction, as well as tissues and specimens for use in scientific research, for determination of the causes of stranding and death, for educational purposes, for life history investigations and biological or health research needs. With these data, the Stranding Network and NOAA Fisheries Service can gain insight into the

causes of strandings and other factors that may impact the health of wild marine mammal populations. NOAA Fisheries Service also coordinates the investigations of Unusual Mortality Events (UMEs), which are declared when numerous stranded animals are dying in an unusual way. This can include animals stranding in unexpected numbers, or in a strange location or time of year, or elevated numbers of highly endangered animals. A Working Group on Marine Mammal Unusual Mortality Events, comprised of experts with experience in marine mammal health, biology, and marine science, aids NOAA Fisheries Service and the Stranding Network in conducting a more thorough investigation of unusual stranding events.

The National Marine Mammal Tissue Bank was established in collaboration with the National Institute of Standards and Technology (NIST) and provides protocols and techniques for the long-term storage of tissues from marine mammals for retrospective contaminant analyses. Tissue samples are contributed from several sources, including the Stranding Network, fisheries bycatch, health assessment studies and legal subsistence hunts. The Tissue Bank uses the biomonitoring sites noted above and other trained personnel to collect tissues on specific indicator species (harbor seals, California sea lions, northern fur seals, ringed seals, pilot whales, harbor porpoises, Atlantic white-sided dolphins, pygmy sperm whales, bottlenose dolphins, rough-toothed dolphins, common dolphins, beluga whales, bowhead whales, and polar bears), mass stranding animals, and mortality events. In addition, a serum bank and long-term storage of histopathology tissues are being developed.

In recent years, high concentrations of potentially toxic substances in marine mammals and an increase in new diseases have been documented. Scientists have begun to consider the possibility of a link between these toxic substances and marine mammal mortality events. These studies contribute to a growing, worldwide effort of marine mammal biomonitoring not only to help assess the health and contaminant loads of marine mammals, but also to assist in determining anthropogenic impacts on marine mammals, marine food chains and marine ecosystem health. NOAA Fisheries Service provides participants in the program with training and some financial support. Using strandings, and bycatch animals, the participants provide tissue/serum archiving, samples for analyses, disease monitoring and reporting and additional response during disease investigations. .

6. International cooperation activities

The U.S. Government, through the NOAA Fisheries Service, undertakes a number of research projects on cetaceans in U.S. waters and overseas. NOAA Fisheries Service also collaborates with non-U.S. scientists on a wide variety of cetacean research activities.

In 1992, the U.S. joined various Latin and South American countries to form the *International Dolphin Conservation Program*. In 1995, the U.S. and the Governments of Belize, Colombia, Costa Rica, Ecuador, France, Honduras, Mexico, Panama, and Spain came together and negotiated the Panama Declaration, establishing conservative species/stock specific annual dolphin mortality limits and representing an important step toward reducing bycatch of dolphins in commercial Eastern Tropical Pacific (ETP) tuna purse seine fisheries. The Agreement on the International Dolphin Conservation Program (AIDCP) aims to reduce incidental dolphin mortalities in the tuna purse-seine fishery through the setting of annual limits, seeks alternative means of capturing large yellowfin tunas not in association with dolphins, and ensures the long-term sustainability of tuna stocks and marine resources in the ETP. To date, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Peru, United States, Vanuatu, and Venezuela have ratified the AIDCP. Bolivia, Colombia, and the European Union are applying the Agreement provisionally.

In addition, the U.S. Government is a party to a number of multi-lateral agreements related to cetaceans and their marine environments:

- International Whaling Commission
- Convention on International Trade in Endangered Species of Wild Fauna and Flora
- Commission for the Conservation of Antarctic Marine Living Resources