

***NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE 01-106  
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***Fisheries Management***

***POLICY ON BYCATCH***

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***SUMMARY OF REVISIONS:***

1. Bycatch is the incidental catch and resultant injury or mortality of non-target fish, protected marine species and seabirds in fisheries. Bycatch can have substantial economic and biological consequences not only on the species caught incidentally, but on other predator and prey species in the ecosystem. Regulation of a fishery to control the impact can affect the economic viability of the fishery and the communities they support.

2. The reduction of bycatch is a management priority for the agency. NOAA Fisheries will attack bycatch impacts through an aggressive bycatch reduction program that includes: a collaborative conservation engineering program with industry to research and develop new gear technologies and fishing practices that minimize adverse bycatch; an extensive education and outreach element to transfer these technologies and techniques to domestic and foreign industries; developing comprehensive monitoring capabilities to evaluate the effects of bycatch reduction policies<sup>1</sup>.

3. Mandates for Bycatch Reduction. NMFS has several strong mandates for fish and protected species bycatch reduction, including the MSFCMA, ESA, and MMPA. These mandates are discussed in the following subsections.

3.1 Magnuson-Stevens Act. In 1996, Congress amended the Magnuson Fishery Conservation and Management Act (becoming the MSFCMA) in part to define the term “bycatch” as well as to require that bycatch be minimized to the extent practicable. Bycatch, as defined by the MSFCMA (16 U.S.C. § 1802 (2)), “means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. The term does not include fish released alive under a recreational catch and release fishery management program.” “Economic discards” are “fish which are the target of a fishery, but which are not retained because of an undesirable size, sex, or quality, or other economic reason.” The term “regulatory discards” means “fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.” Note that because the definition of “fish” refers to “finfish, mollusks, crustaceans, and all other living forms of animal and plant life other than marine mammals and birds,” the bycatch reduction requirements in the MSFCMA do not apply to all living marine resources under NMFS’s jurisdiction.

National standard 9 of the MSFCMA requires that “conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch” (16 U.S.C. § 1851(9)). Sec. 303 of the MSFCMA expands on this requirement somewhat, stating that fishery management plans are required to “establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority (A) minimize bycatch and (B) minimize the mortality of bycatch which cannot be avoided” (16 U.S.C. § 1853(11)).

3.2 Endangered Species Act (ESA). The ESA requires the Federal government to protect and conserve species and populations that are endangered, or threatened with extinction, and to conserve the ecosystems on which these species depend. Some of these threatened and endangered species, including certain species of sea turtles (for example, the leatherback turtle, *Dermochelys coriacea*), Pacific salmon (for example, some evolutionarily significant units of chum salmon, *Oncorhynchus keta*), and marine mammals (for example, the northern right whale, *Eubalaena glacialis*), are captured or taken as bycatch in the nation’s fisheries. The bycatch reduction requirements of the ESA follow from Section 9(a)(1)(B) and 9(a)(1)(C) of the ESA, which prohibit the take of endangered species within the United States or the territorial sea of the United States, and on the high seas, respectively. “Take” is defined by the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1536(18)). ESA Sections 4, 6, 7, and 10 provide mechanisms for the limited take of ESA-listed species. Of particular relevance for fisheries bycatch is Section 7, which provides that “Each Federal agency shall...insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species . . .”(16 U.S.C. §1536(a)(2)). For example, Section 7 consultations and resulting biological opinions and reasonable and prudent alternatives have resulted in fishery regulations to prevent bycatch of endangered and threatened sea turtles in the Atlantic and Pacific Oceans.

Several seabird species, such as the marbled murrelet, *Brachyramphus marmoratus*, and short-tailed albatross, *Phoebastria albatrus* (excluding U.S. populations), are protected under the ESA as well. In cooperation with the Department of the Interior’s U.S. Fish and Wildlife Service, the NMFS monitors and reports the bycatch of these and other seabirds. Additionally, international conventions and treaties also play a significant role in the national approach to bycatch management. For example, the Food and Agriculture Organization of the United Nations, Committee on Fisheries, developed the International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries. This plan is being implemented by NMFS and other fishing countries via corresponding National Plans of Action.

3.3 Marine Mammal Protection Act (MMPA). The MMPA seeks to maintain populations of marine mammals at optimum sustainable population levels, principally by regulating the take of marine mammals. Under the MMPA, “take” is defined as “to harass, hurt, capture, or kill, or attempt to harass, hurt, capture, or kill any marine mammal.” This includes fishing-related

mortality and serious injury. Although the MMPA prohibits the take of marine mammals, it provides exceptions to the prohibition for incidental mortality and serious injury in the process of commercial fishing activities. Section 118 of the MMPA requires that NMFS classify each U.S. fishery according to whether it has a frequent (Category I), occasional (Category II), or remote (Category III) likelihood of incidental mortality and serious injury to marine mammals. It also establishes a process for take reduction teams to develop take reduction plans (TRP's) for fisheries that result in frequent or occasional incidental mortality or serious injury of "strategic" marine mammal stocks. Participants in Category I or II fisheries are required to register with NMFS, take on board an observer if requested by NMFS to do so, and to comply with all applicable TRP regulations. All fishermen, including those participating in Category III fisheries, are required to report the incidental mortality and serious injury of a marine mammal should it occur. Take reduction plans currently are in effect for the harbor porpoise, *Phocoena phocoena*, in the Mid Atlantic and Gulf of Maine regions; large whales (*Eubalaena glacialis*, *Megaptera novaenangliae*, and *Balaenoptera physalis*) in the Atlantic; and the pilot whale, *Globicephala macrorhynchus*; pygmy sperm whale, *Kogia breviceps*; sperm whale, *Physeter macrocephalus*; humpback whale, *Megaptera novaeanliae*; and beaked whales (*Berardius bairdii*, *Mesoplodon* spp., *Ziphius cavirostris*) in the Pacific. A TRP for the coastal bottlenose dolphin, *Tursiops truncatus*, in the western North Atlantic is near completion.

4. Bycatch is an important issue facing NMFS today. The requirements in current law to reduce bycatch underscore the value of living marine resources to the nation as well as the commitment to ensure that these resources are protected and sustained for future generations. The NMFS National Bycatch Strategy has to date served as an effective vehicle to elevate the profile of bycatch in the agency and inspire a renewed commitment to bycatch reduction and minimization agency-wide. The attainment of adequate funding and other support is essential to the success of the National Bycatch Strategy. Although positive signs have already materialized in the form of increased Congressional attention to and funding of bycatch reduction efforts, making progress on bycatch reduction will require continued support and attention to this important issue from all of NMFS's partners, including the fishing industry, state fishery managers, scientists, environmental organizations, and Federal lawmakers<sup>2</sup>.

Signed \_\_\_\_\_/s/ Jan 24 2006 \_\_\_\_\_  
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 National Marine Fisheries Service

<sup>1</sup> Paragraphs 1 and 2 are excerpted with only minor editorial changes from the NOAA Fisheries Strategic Plan, FY2003-FY2008. USDOC/NOAA/NMFS, July 9, 2003, p. 14.

<sup>2</sup> Paragraphs 3 through 5 are excerpted with only minor editorial changes from Benaka and Dobrzynski, "The National Marine Fisheries Service's National Bycatch Strategy", Marine Fisheries Review, 66(2) 2004, pp 1-8.