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MMPA Bulletin - September/October 1995

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Negligible Impact Finding Made for Three ESA-Listed Marine Mammal Stocks

On August 31, 1995, NMFS made negligible impact findings under the MMPA for three stocks of marine mammals listed as threatened or endangered under the Endangered Species Act (ESA): humpback whales in the central north Pacific, and Steller sea lions in both the eastern and western Pacific. A single interim permit was issued to 24 Category I and II fisheries authorizing the incidental take of animals from these stocks (60 FR 45399). For seven other stocks of marine mammals, NMFS was unable to determine that incidental takes by commercial fishing would have a negligible impact. As a result, a permit was not issued to fisheries that have the potential to incidentally take threatened or endangered marine mammals from these stocks.

Section 101(a)(5)(E) of the MMPA requires NMFS to authorize the incidental, but not intentional, taking of ESA-listed marine mammals provided that three conditions are met. First, the incidental taking must be determined to have a negligible impact on the affected species or stock. Second, a recovery plan for that species or stock must exist or be under development. And, third, where required by section 118 of the MMPA, a monitoring program must be established, vessels in the fishery must be registered, and a take reduction plan must exist or be under development.

In order to determine whether the first condition has been met, that incidental takes have a negligible impact on the affected stock, NMFS has evaluated the best available information for all ESA-listed marine mammals on a stock-by-stock basis. Those stocks for which negligible impact findings were made were then reviewed to determine if the second and third conditions have also been met. If all three conditions were met, the fisheries were included in a single permit which authorizes the incidental, but not intentional, taking of marine mammals by fisheries which are

known to interact with that stock. For some stocks, NMFS was unable to make a negligible impact finding. For others, there was no evidence of fishery interactions (see chart below).

Vessels participating in Category I and II fisheries that incidentally take marine mammals from ESA-listed stocks without authorization permits may be subject to penalties under the MMPA and/or the ESA. Vessels found in violation may be subject to civil fines as well as seizure and forfeiture of their cargo. Individuals found in violation may be subject to civil fines. Individuals who intentionally violate the prohibitions of the MMPA are also subject to criminal penalties and imprisonment of up to one year.

Prior to the 1994 amendments to the MMPA, there was no mechanism for authorizing the incidental take of ESA-listed species in fishery operations. Because this is the first attempt to authorize incidental takings, NMFS has issued the initial permit on an interim basis so that the public could comment on the process and the fisheries permitted (or not permitted). The comment period for this action ends on October 16, 1995. For more information, or a copy of the report "Assessment of Fishery Impacts on Endangered and Threatened Marine Mammals Pursuant to Section 101(a)(5)(E)", contact [Vicki Cornish](#) at 301-713-2322.

Negligible Impact Finding Made

- ! Humpback Whale, Central North Pacific
- ! Steller Sea Lion, Eastern (Pacific)
- ! Steller Sea Lion, Western U.S. (Pacific)

NMFS Unable to Make Negligible Impact Finding

- ! Fin Whale, Western North Atlantic
- ! Humpback Whale, California/Oregon/Washington - Mexico
- ! Humpback Whale, Western North Atlantic
- ! Northern Right Whale, Western North Atlantic
- ! Sperm Whale, Western North Atlantic
- ! Sperm Whale, California/Oregon/Washington - Mexico
- ! Hawaiian Monk Seal

No Documented Evidence of Fishery-Related Interactions

- ! Blue Whale, Western North Atlantic
- ! Blue Whale, California/Mexico
- ! Blue Whale, Hawaii
- ! Bowhead Whale, Western Arctic
- ! Fin Whale, Alaska
- ! Fin Whale, California/Oregon/Washington
- ! Fin Whale, Hawaii
- ! Humpback Whale, Western North Pacific
- ! Northern Right Whale, North Pacific
- ! Sei Whale, Eastern North Pacific
- ! Sei Whale, Western North Atlantic
- ! Sperm Whale, Alaska

- ! Sperm Whale, Hawaii
- ! Sperm Whale, Northern Gulf of Mexico
- ! Guadalupe Fur Seal

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In the Pipeline...

- ! **Take Reduction Teams Update:** On September 14, 1995, NMFS awarded a contract to RESOLVE, INC. to develop a series of Take Reduction Teams under the MMPA, and to facilitate the convening of these Take Reduction Teams over a six-month period. After six months, each team is responsible for recommending a Take Reduction Plan to NMFS. It is anticipated that the selection of individuals necessary to formulate the six Take Reduction Teams will be completed by November 1, 1995. NMFS expects to have draft Take Reduction Plans available for public review by spring, 1996. For more information, contact [Michael Payne](#) at 301-713-2322.

- ! **State-Federal Coordination of Fishery Registration:** Participants in Category I or II commercial fisheries must register annually for an authorization certificate under section 118 of the MMPA, in addition to their state or Federal fishery license or permit. Efforts to provide "one-stop shopping" for fishers have been ongoing and we hope to have a few states on board by January, 1996. Details on changes to the registration process will be outlined in the final List of Fisheries for 1996, due to be published in November, 1995. Nationally, the majority of states have welcomed the idea of the state/Federal integration process. However, the issue of funding and/or reimbursement remains a concern. Obstacles also exist in the compatibility between existing registration systems and the relative sophistication of each state's database. For more information, contact [Margot Bohan](#) at 301-713-2322.

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California Sea Lion ("Herschel") Conflict with Wild Steelhead

Efforts to protect the 1995 season's wild winter-run steelhead at the Ballard locks in Seattle from sea lion predation ended in June and are presently being evaluated by managers at NMFS. Although the 1995 returns of wild steelhead are better than 1994, with a final spawning escapement totaling 126 fish -- an 80% increase over the all time low return of 70 in 1994 -- the implications for any long-term run improvement are less certain.

From December 5 to June 17, 1995, observers monitoring sea lion predation in the Lake

Washington Ship Canal documented a total of 8 steelhead eaten by sea lions. The total estimated take was 11 wild steelhead, approximately 8 percent of the total wild run, significantly lower than the 50% to 65% predation rates observed from 1986 to 1991. This lower rate may be either the result of fewer available steelhead, which are down from over 1,000 per year prior to 1992, or the effectiveness of the acoustic devices used in deterring sea lions from the prime "feeding" area at the entrance to the fish ladder.

The 1995 predation control program was conducted by the Washington Department of Fish and Wildlife (WDFW) in conjunction with NMFS, in accordance with a Letter of Authorization issued to WDFW by NMFS under the MMPA. As reported in the February, 1995, MMPA Bulletin, NMFS convened a Pinniped-Fishery Interaction Task Force and conditionally approved the Task Force's recommendation to have WDFW lethally remove individually-identified sea lions. The principal condition specified by NMFS in its authorization was to place captured sea lions in captivity, allowing lethal removal only in cases where captive holding was unfeasible.

A total of three sea lions were captured and held in the 1995 season; they were later released. Sea lion #17, branded in 1989, was captured in Seattle on January 25th and held in captivity during the 1995 steelhead run until June 8th, when it was released into the wild in the Channel Islands. A satellite tag applied to the animal tracked its movements to the Pacific Northwest. At last report, on August 29, the animal had migrated north past Oregon and Washington to Barkley Sound on Vancouver Island, B.C.. It is anticipated that #17 will soon return to Puget Sound and make its way to the Ballard Locks. During captivity, #17 increased in weight from 872 pounds when captured to 1,082 pounds at the time of release. This was the only animal placed in captivity, although several others were identified as candidates for captivity if captured. One of those, #225, which had killed three steelhead on February 8 (the most steelhead observed killed on any single day), was captured on May 24 and, due to the lateness in the season, was not placed in captivity but rather transported to the Straits of Juan de Fuca and released. The same circumstances occurred with sea lion #87, the most frequently observed, identifiable sea lion at the Locks in 1995. Sea lion #87 was captured on June 17 and also released in the Straits. Both sea lion #87 and #225 were observed at the Locks later in June, feasting on downstream migrating smolts.

Ongoing efforts of the Pinniped-Fishery Interaction Task Force will be discussed in future editions of the MMPA Bulletin. For more information, call Joe Scordino at 206-526-6143.

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Flipper's Myth Proves Harmful

The "playful" antics performed by Flipper for 1960s T.V. audiences has left dolphins and other marine mammals with a mythical, larger-than-life reputation. Viewed as intelligent, nearly human creatures, dolphins are attributed with powers ranging from reducing stress in humans to telepathically communicating with emotionally-disturbed children. The commercial operations

making these claims neglect to acknowledge these creatures as powerful wild animals, whose need to survive deserves respect and caution from humans. Unfortunately, public feeding and swimming-with activities with wild dolphins in the Atlantic Ocean, Gulf of Mexico and Hawaiian waters, and feeding sea lions on the west coast, has caused these animals to become at risk to injury from humans, and in turn, aggressive towards people.

In the late 1980s, commercial boat tours in the Carolinas, Florida and Texas started feeding wild dolphins. Although the practice was banned following a 1993 court ruling, some recreational boaters and commercial operators continue to illegally feed dolphins in the wild. There are numerous reports of both dolphins and humans being injured - and occasionally killed - from engaging in these activities. Reports received by NMFS include people being bitten, swimmers being pulled under the water, and injuries severe enough to require stitches and hospitalization. In Brazil, a man who was harassing a wild dolphin was killed when the dolphin rammed him in the chest.

NMFS is especially concerned about the increasing frequency of injuries, deaths and changing behaviors among local-area dolphins which appear to be related to feeding and swimming-with activities. As these animals lose their natural fear of humans, they become increasingly vulnerable to interactions and collisions with fishing and recreational vessels. They also become more reliant on begging for handouts instead of foraging. Reports of vandalism against dolphins have included people feeding dolphins beer, hot dogs, candy bars and baited fishhooks. In Florida, some dolphins have become so brazen that they now take bait off of fishing lines. Unfortunately, the hook and line often lodge into the mouth or throat, particularly in younger, less adept dolphins. This became such a problem at one pier in Fort Walton Beach, Florida, that a favorite sport was to attempt to "land a dolphin".

The behavioral impact of these activities on the animals, especially on calves and juveniles, is of particular concern to scientists. A report about the famous Monkey Mia resort in Western Australia, where approximately half a dozen female dolphins have been provisioned with handouts from the beach, found that of the 17 calves born to the provisioned adults since feeding began, only 5 have survived. Starvation due to lack of foraging and hunting skills were cited among the causes of death. In Hawaii, pelagic dolphins are known to frequent quiet coves and shallow areas in order to rest during the day and avoid predation. Some entrepreneurs have discovered this phenomenon and are bringing tourists to these areas to swim with the dolphins. Scientists are concerned that the dolphins resting patterns are being disrupted, which may eventually lead to the dolphins being displaced from their natural resting areas.

The problem of humans interacting with marine mammals is not exclusive to dolphins. NMFS has documented a rise in human interactions with a variety of marine mammal species. Sea lions accustomed to handouts in areas along the California coast have been vandalized with seal bombs and are now considered to be threatening nuisances at various public marinas. Also on the West coast, elephant seal rookeries along the popular coastal highway 101 are experiencing the negative effects of human encroachment. State park rangers in San Simeon have witnessed people jumping onto the backs of these animals for a ride and parents placing their children along side of them for a photograph. In the Northeast, seals have been hauling out and pupping in such

populated areas as Long Island, NY. Seven people were bitten last year by seals on Long Island alone. In addition to the injury caused by the bite itself, there is always the possibility that bite wounds from wild animals may become infected. Although uncommon, marine mammals can transmit diseases to humans and domestic animals.

In the last decade, marine mammals in general, and dolphins in particular, have grown in popularity among the public. The friendly reputation of dolphins has taken on mythical proportions, leading to many lucrative operations in the tourist trade that often misinform the public. In addition, public attitudes are taking a dangerous turn: in some areas, the provisioned dolphins and sea lions are now considered to be "nuisance animals". NMFS hopes to avert the disaster which occurred in the 1970s when public feeding of bears in Yellowstone National Park forced park officials to destroy an average of 27 bears per year.

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NMFS is attempting to educate the public about the harm they are causing these animals and the need for common sense and respect when it comes to enjoying wildlife. For the second year in a row, NMFS has initiated an educational campaign aimed at informing the public that feeding and swimming with wild marine mammals is not only illegal under the MMPA, but harmful to both the animals and people. Part of NMFS educational efforts is the development of enforcement signs informing the public that these activities are harmful to wildlife and can carry civil and criminal penalties. The signs also provide a NMFS Enforcement Hotline number, 1-800-853-1964.

Although NMFS does not have the resources to place an enforcement agent on every waterway, it is hoped that members of the conservation, science, public display and fishing communities will join NMFS in helping to inform people to respect the wild nature of these animals by minimizing human impacts.

Responsible observation cruises provide the best environment for experiencing marine mammals in the wild. Under NO circumstances should people feed or swim with wild marine mammals. It is illegal, harmful and can even be fatal. For more information, contact the Permits Division at 301-713-2289.

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Final Marine Mammal-Fishery Interaction Regs Published

The final regulations implementing section 118 of the MMPA were published in the Federal Register on August 30, 1995. These regulations replace the regulations issued under section 114 of the MMPA (the interim exemption program). The new regulations authorize the incidental, but not intentional, taking of marine mammals in commercial fisheries.